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COLORADO CODE OF MILITARY
JUSTICE

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TITLE 28 MILITARY AND VETERANS
ARTICLE 3.1 COLORADO CODE OF MILITARY JUSTICE :
PART 1 GENERAL PROVISIONS

28-3.1-101. Short title.

This article shall be known and may be cited as the "Colorado Code of Military Justice".

Source: L. 83: Entire article added, p. 1162, § 1, effective June 10.

28-3.1-102. Definitions.

As used in this article, unless the context otherwise requires:

- (1) "Accuser" means any person who signs and swears to charges, any person who directs that charges be signed and sworn to by another, and any person who has an interest other than an official interest in the prosecution of the accused.
- (2) "Active state duty" means all duty authorized under the constitution and laws of the state of Colorado and all training authorized under title 32 of the United States code.
- (3) "Code" means the Colorado code of military justice.
- (4) "Commanding officer" includes only a commissioned officer.
- (5) "Commissioned officer" means a person who holds the rank of not less than second lieutenant.
- (6) "Convening authority" includes, in addition to the person who convened the court, a commissioned officer commanding for the time being or a successor in command.
- (7) "Enlisted member" means any person who is serving in an enlisted grade.
- (8) "Grade" means a step or degree in a graduated scale of office or military rank that is established by law or regulation.
- (9) "Hostile force" means any person or group of persons acting in violation of the law or opposing the military force in the carrying out of its missions, including but not limited to saboteurs, rioters, and looters.
- (10) "Judge advocate" means any commissioned officer who is certified by the state judge advocate general.
- (11) "Legal officer" means any commissioned officer of the state military forces designated to perform legal duties of a command.
- (12) "Military" or "military forces" refers to any or all of the state military forces.
- (13) "Military court" means a court-martial, a court of inquiry, or a provost court.
- (14) "Military judge" means an official of general and special courts-martial detailed in accordance with section 28-3.1-210.
- (15) "Officer" means a commissioned or warrant officer.
- (16) "Officer candidate" means a cadet of the state officer candidate school.
- (17) "President" means the member of the court highest in grade and rank.
- (18) "Rank" means order of precedence among members of the state military forces.

(19) "State judge advocate general" means the judge advocate general of the state military forces, appointed pursuant to section 28-3.1-106, who is responsible for supervising the administration of military justice in the state military forces and performing such other legal duties as may be required by the adjutant general.

(20) "State military forces" means the national guard of this state, as defined in section 28-3-101 (12), and any other militia or military forces organized under the laws of the state.

(21) "Superior commissioned officer" means a commissioned officer superior in rank of command.

Source: **L. 83:** Entire article added, p. 1162, § 1, effective June 10. **L. 2002:** (20) amended, p. 362, § 23, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (20), see section 1 of chapter 121, Session Laws of Colorado 2002.

28-3.1-103. Persons subject to this code.

This code applies to all members of the state military forces.

Source: **L. 83:** Entire article added, p. 1163, § 1, effective June 10. **L. 91:** Entire section amended, p. 1377, § 1, effective April 1.

28-3.1-104. Jurisdiction to try certain personnel.

(1) Any person discharged from the military forces who is later charged with having fraudulently obtained his or her discharge is subject to trial by court-martial on that charge and, after apprehension, shall be subject to this code while in the custody of the military for that trial. Upon conviction of that charge, he or she is subject to trial by court-martial for all offenses under this code committed before the fraudulent discharge.

(2) No person who has deserted from the military forces may be relieved from the jurisdiction of this code by virtue of a separation from any later period of service.

(3) The fact that the enlistment of any person charged with an offense under this code expires while proceedings are pending or while serving a sentence shall not affect the jurisdiction of any court-martial.

(4) Nothing in this code shall preclude applicable federal or state jurisdiction over offenses committed.

Source: **L. 83:** Entire article added, p. 1164, § 1, effective June 10. **L. 2002:** (1) amended, p. 602, § 60, effective May 24.

ANNOTATION

C.J.S. See 6 C.J.S., Armed Services, §§ 297, 298.

28-3.1-105. Territorial applicability of this code.

(1) This code shall apply to all persons otherwise subject to this code while they are serving outside the state and while they are going to and returning from such service outside the state in the same manner and to the same extent as if they were serving inside the state.

(2) Courts-martial and courts of inquiry may be convened and held in units of the military forces while those units are serving outside the state with the same jurisdiction and powers as to persons subject to this code as if the proceedings were held inside the state. Offenses committed outside the state may be tried and punished either inside or outside the state.

Source: **L. 83:** Entire article added, p. 1164, § 1, June 10.

28-3.1-106. State judge advocate general and judge advocates.

(1) The adjutant general shall select and appoint an officer of the military forces as state judge advocate general. To be eligible for such appointment, an officer must be a member of the bar of the state of Colorado for at least five years and must meet the additional requirements for appointment to the state staff as set forth in section 28-3-302.

(2) The adjutant general may appoint as many assistant state judge advocates as he or she considers necessary. To be eligible for appointment, assistant state judge advocates must be officers of the state military forces and members of the bar of the state of Colorado.

(3) Convening authorities shall at all times communicate directly with their staff judge advocates in matters relating to the administration of military justice. The staff judge advocate of any command is entitled to communicate directly with the staff judge advocate of a superior or subordinate command or with the state judge advocate general.

(4) No person who has acted as a member military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in any case or who has been a witness for either the prosecution or defense in any case may later act as staff judge advocate to any reviewing authority upon the same case.

Source: L. 83: Entire article added, p. 1164, § 1, effective June 10. **L. 2002:** (2) amended, p. 603, § 61, effective May 24.

ANNOTATION

C.J.S. See 6 C.J.S., Armed Services, §§ 297, 298.

28-3.1-107. Apprehension and restraint.

(1) Officers, warrant officers, and enlisted members of the military forces may be placed in arrest by their military superiors upon reasonable belief that an offense in violation of this code has been committed and that the person apprehended committed such offense. An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this code or through any person authorized by this code to apprehend persons. A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted members of his or her company or subject to his or her authority into arrest or confinement. A commissioned officer or warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority he or she is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated. No person may be ordered apprehended or into arrest or confinement except for probable cause. This section shall not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

(2) If any member of the military forces fails or refuses to report to his or her appointed place of duty, his or her commanding officer is authorized to arrest or cause to be arrested such member and have him or her brought before the commanding officer at his or her unit or organization headquarters, whether such headquarters be located within or without the borders of the state. After such an arrest, the commanding officer is authorized to transport such member to his or her appointed place of duty, whether within or without the borders of the state. If military personnel are not available for the purpose of making the arrest, or if the commanding officer deems it advisable, he or she may issue a warrant to any peace officer authorized to serve warrants of arrest under state criminal law, and such peace officer is authorized and required to serve such warrant in the same manner as other warrants of arrest and make return thereof to the commanding officer issuing the warrant.

(3) If the commanding officer issuing the warrant is unavailable to receive the person arrested, the arresting officer shall take the person before a county court judge in the state. The judge may admit the person arrested to bail by bond, with sufficient sureties and in such sum as he or she deems proper, conditioned upon the person arrested appearing before said judge at a time specified in such bond for his or her surrender to the commanding officer issuing the warrant or to his or her representative. If the person arrested is unable to post bail, he or she shall be committed by the judge to the county jail for a period of time not to exceed three days to await surrender to the commanding officer issuing the warrant or to his or her representative.

(4) Warrants of arrest issued pursuant to this section shall be in the following form:

STATE OF _____)
) ss.
COUNTY OF _____)
To the (Sheriff), (Constable), (Chief of Police) of (Or the name and
rank of the officer, First Sergeant, or N.C.O. ordered to make the arrest) of
County _____ :

(name of individual to be arrested, rank, serial number)

a member of _____, Colorado National Guard, having failed or
refused

(unit designation)
to report to his or her appointed place of duty at _____, you
are therefore commanded forthwith to arrest the above named

(name of individual to be
arrested)
and bring him or her before me at
_____.

(unit headquarters)
The arrest is authorized to be made either during the day or at night. Dated
at _____, this _____ day of _____, 20__.

/s/_____
(Type signer's name, rank, branch,
organization, and designation as
commanding officer)

(5) The fees and mileage allowed for the service of warrants of arrest issued pursuant to this section shall be the same as provided by law for the service of criminal process and shall be paid out of funds appropriated to the office of the adjutant general upon proper application therefor.

Source: L. 83: Entire article added, p. 1165, § 1, effective June 10. **L. 2002:** (1) to (4) amended, p. 603, § 62, effective May 24.

ANNOTATION

Am. Jur.2d. See 53 Am. Jur.2d, Military and Civil Defense, § 2.

28-3.1-108. Apprehension of deserters.

Any officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth, or the District of Columbia may summarily apprehend a deserter from the military forces. If the offender is apprehended outside the state of Colorado, his or her return to Colorado must be in accordance with normal extradition procedure or reciprocal agreement.

Source: L. 83: Entire article added, p. 1166, § 1, effective June 10. **L. 2002:** Entire section amended, p. 604, § 63, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 307.

28-3.1-109. Restraint of persons charged with offenses.

Any person subject to this code who is charged with an offense under this code may be ordered into arrest or confinement by the convening authority, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him or her of the specific offense of which he or she is accused and to try him or her or to dismiss the charges and release him or her.

Source: L. 83: Entire article added, p. 1166, § 1, effective June 10. **L. 2002:** Entire section amended, p. 604, § 64, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 307.

C.J.S. See 6 C.J.S., Armed Services, § 289.

28-3.1-110. Confinement.

(1) Persons confined other than in a guardhouse, whether before, during, or after trial by a military court, shall be confined in a jail in the county where the offense was committed or a jail designated by the convening authority, the costs of such confinement to be paid out of funds appropriated to the office of the adjutant general.

(2) No provost marshal, commander of a guard, or master-at-arms, and no warden, sheriff, keeper, or officer of a city or county jail or any other jail, penitentiary, or prison designated under subsection (1) of this section may refuse to receive or keep any prisoner committed to his or her charge when the committing person furnishes a statement signed by him or her of the offense charged against the prisoner.

(3) Every commander of a guard, every master-at-arms, and every warden, sheriff, keeper, or officer of a city or county jail or of any other jail, penitentiary, or prison designated under subsection (1) of this section to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he or she is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against him or her, and the name of the person who ordered or authorized the commitment.

Source: L. 83: Entire article added, p. 1166, § 1, effective June 10. **L. 2002:** (2) and (3) amended, p. 605, § 65, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 329-331.

C.J.S. See 6 C.J.S., Armed Services, § 289.

28-3.1-111. Confinement with enemy prisoners prohibited.

No member of the military forces may be placed in confinement in immediate association with enemy prisoners.

Source: L. 83: Entire article added, p. 1167, § 1, effective June 10.

28-3.1-112. Punishment prohibited before trial.

Subject to section 28-3.1-403, no person, while being held for trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against such person, nor shall the arrest or confinement imposed upon such person be any more rigorous than the circumstances require to insure his or her presence. However, such person may be subjected to minor punishment during that period for infractions of discipline.

Source: L. 83: Entire article added, p. 1167, § 1, effective June 10. **L. 2002:** Entire section amended, p. 605, § 66, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 327.

C.J.S. See 6 C.J.S., Armed Services, § 289.

28-3.1-113. Delivery of offenders to civil authorities.

(1) Under such regulations as are prescribed under this code, a person subject to this code who is on active state duty who is accused of any offense against civil authority may be delivered, upon request, to the civil authority for trial.

(2) When delivery under this section is made to any civil authority of a person undergoing sentence of a court-martial and the delivery interrupts the execution of the sentence of the court-martial, the offender after having answered to the civil authorities for his or her offense shall, upon the request of competent military authority, be returned to military custody for the completion of his or her sentence.

Source: L. 83: Entire article added, p. 1167, § 1, effective June 10. L. 2002: (2) amended, p. 605, § 67, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 355.

C.J.S. See 6 C.J.S., Armed Services, § 289.

28-3.1-114. Commanding officer's nonjudicial punishment.

(1) Punishment may be imposed for any offense cognizable by a court-martial upon any member of the state military forces under this section. Under such regulations as the governor may prescribe, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized and the categories of commanding officers and warrant officers exercising command authorized to exercise those powers. If authorized by regulations of the governor, the governor or an officer of general rank in command may delegate his or her powers under this section to a principal assistant. If subject to disciplinary punishment, the accused shall be afforded the opportunity to be represented by defense counsel having the qualifications prescribed under section 28-3.1-102 (14), if available. Otherwise, the accused shall be afforded the opportunity to be represented by any available commissioned officer of his or her choice. The accused may also employ civilian counsel of his or her own choosing at his or her own expense. In all proceedings, the accused is allowed three duty days, or longer on written justification, to reply to the notification of intent to impose punishment under this section.

(2) Subject to subsection (1) of this section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses, as defined by the governor, without the intervention of a court-martial:

(a) Upon an officer of his or her command:

(I) Withholding of privileges for not more than two consecutive weeks;

(II) Restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks;

(III) If imposed by the governor, the adjutant general, or a commanding officer of the army or air national guard, a fine or forfeiture of pay and allowance of not more than two hundred fifty dollars;

(b) Upon other military personnel of his or her command:

(I) Withholding of privileges for not more than two consecutive weeks;

(II) Restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks;

(III) Extra duties for not more than fourteen days, which need not be consecutive, and for not more than two hours per day, holidays included;

(IV) Reduction to next inferior grade if the grade from which he or she was demoted was established by the command or an equivalent or lower command;

(V) A fine or forfeiture of pay and allowances of not more than fifty dollars for a single offense and of not more than two hundred fifty dollars for multiple offenses.

(3) The governor may, by regulation, place limitations on the powers granted by this section with respect to the kind and amount of punishment authorized and the categories of commanding officers authorized to exercise those powers.

(4) An officer in charge may, for minor offenses, impose on enlisted members assigned to the unit of which he or she is in charge, the punishments authorized to be imposed by commanding officers.

(5) Except where punishment has been imposed by the governor, a person punished under this section who considers such punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, his or her successor in command, and superior authority may suspend, set aside, or remit any part or amount of the punishment and restore all rights, privileges, and property affected.

(6) The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission and not properly punishable under this section; but the fact that disciplinary punishment has been enforced may be shown by the accused upon trial and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(7) Whenever a punishment of forfeiture of pay and allowances is imposed under this section, the forfeiture may apply to pay or allowances accruing on and after the date that punishment is imposed and to pay and allowances accrued before that date.

Source: **L. 83:** Entire article added, p. 1167, § 1, effective June 10. **L. 86:** (1) and (2)(b)(V) amended, p. 1014, § 2, effective July 1. **L. 91:** (2)(b)(V) amended, p. 1377, § 2, effective April 1. **L. 2002:** (1), IP(2)(a), IP(2)(b), (2)(b)(IV), (4), and (5) amended, p. 605, § 68, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 257-259.

TITLE 28 MILITARY AND VETERANS : MILITARY :
ARTICLE 3.1 COLORADO CODE OF MILITARY JUSTICE :
PART 2 COURTS-MARTIAL

28-3.1-201. Courts-martial - jurisdiction - composition.

(1) In the military forces general, special, and summary courts-martial shall be constituted like similar courts of the armed forces of the United States. They shall have the jurisdiction and powers, except as to punishment, of a similar court of the armed forces of the United States and shall follow the forms and procedures provided by those courts.

(2) The three kinds of courts-martial are:

(a) General courts-martial, consisting of a military judge and not less than five members, or consisting of only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves;

(b) Special courts-martial, consisting of a military judge and not less than three members, or consisting of only a military judge if the accused so requests under the same conditions as those prescribed in paragraph (a) of this subsection (2);

(c) Summary courts-martial, consisting of one commissioned officer.

Source: L. 83: Entire article added, p. 1169, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 256, 261, 264, 266-268, 272, 273, 276.

C.J.S. See 6 C.J.S., Armed Services, §§ 295, 297, 298.

28-3.1-202. Complete record of proceedings and testimony - when required.

A dishonorable discharge or dismissal may not be adjudged unless a verbatim record of the proceedings and testimony before the court has been made.

Source: L. 83: Entire article added, p. 1169, § 1, effective June 10.

28-3.1-203. Jurisdiction of general courts-martial.

(1) General courts-martial have jurisdiction to try persons subject to this code for any offense punishable under this code and may adjudge any of the following punishments:

(a) Confinement for not more than two years;

(b) A fine of not more than one thousand dollars;

(c) Forfeiture of pay and allowances of not more than two hundred dollars;

(d) A reprimand;

(e) Dismissal or dishonorable discharge;

(f) Reduction of a noncommissioned officer to any inferior grade; or

(g) Any combination of these punishments.

Source: L. 83: Entire article added, p. 1169, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 276-279.

28-3.1-204. Jurisdiction of special courts-martial.

Special courts-martial have jurisdiction to try any person subject to this code, except officers, for any offense punishable under this code. A special court-martial has the same powers of punishment as a general court-martial; except that confinement may not be more than ninety days and the fine or forfeiture of pay and allowances imposed by a special court-martial may not be more than five hundred dollars for a single offense.

Source: L. 83: Entire article added, p. 1169, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 277.

28-3.1-205. Jurisdiction of summary courts-martial.

(1) Summary courts-martial have jurisdiction to try any person subject to this code, except officers, for any offense made punishable under this code.

(2) No person shall be tried by a summary court-martial if, prior to trial, he or she objects thereto. If an objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial, as appropriate.

(3) A summary court-martial may sentence an offender to confinement for not more than thirty days, to a fine of not more than twenty-five dollars for a single offense, to forfeiture of pay and allowances of not more than two hundred fifty dollars for a single offense, to reduction of an enlisted person to any inferior grade, and to any combination of these punishments.

Source: L. 83: Entire article added, p. 1170, § 1, effective June 10. **L. 2002:** (2) and (3) amended, p. 606, § 69, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 277.

28-3.1-206. Who may convene general courts-martial.

General courts-martial may be convened by the governor, the adjutant general for the Colorado national guard, the assistant adjutant general for the Colorado army national guard, the assistant adjutant general for the Colorado air national guard, or the tactical fighter wing commander.

Source: L. 83: Entire article added, p. 1170, § 1, effective June 10. **L. 91:** Entire section amended, p. 1377, § 3, effective April 1.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 263, 264.

28-3.1-207. Who may convene special courts-martial.

The commanding officer of a garrison, fort, post, camp, air base, or other place where members of the military forces are on duty or of a division, brigade, regiment, wing, group, detached battalion, separate squadron, or any group of detached units placed under a command for this purpose may convene special courts-martial. In the Colorado army national guard, special courts-martial convening authorities shall include the state aviation officer, troop command commander, and artillery brigade commander. In the Colorado air national guard, special courts-martial convening authorities shall include the deputy commander for support, the detachment one commander, and the tactical control group commander. Special courts-martial may also be convened by superior authority. When any such commanding officer is an accuser, the court shall be convened by superior authority.

Source: L. 83: Entire article added, p. 1170, § 1, effective June 10. **L. 91:** Entire section amended, p. 1378, § 4, effective April 1.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 263, 264.

28-3.1-208. Who may convene summary courts-martial.

(1) The commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where members of the military forces are on duty or of a division, brigade, regiment, wing, group, battalion, squadron, company, or other detachment may convene a summary court-martial consisting of one commissioned officer. The proceedings shall be informal.

(2) When only one commissioned officer is present with a command or detachment, he or she shall be the summary court-martial of that command or detachment and shall hear and determine all summary courts-martial cases brought before him or her. Summary courts-martial may, however, be convened in any case by superior authority.

Source: L. 83: Entire article added, p. 1170, § 1, effective June 10. **L. 2002:** (2) amended, p. 606, § 70, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 263, 264.

28-3.1-209. Who may serve on courts-martial.

(1) Any commissioned officer off or on duty with the military forces is eligible to serve on all courts-martial for the trial of any person subject to this code.

(2) Any warrant officer off or on duty with the military forces is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer.

(3) (a) Any enlisted member of the military forces who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member, but he or she shall serve as a member of a court only if, before convening of the court, the accused personally has requested in writing that enlisted members serve on it. After such request, the accused shall not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained because of physical conditions or military exigencies. If enlisted members cannot be obtained, the court may be assembled and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why enlisted members could not be obtained.

(b) As used in this section, "unit" means any regularly organized body of the military forces not larger than a company, a squadron, or a body corresponding to one of them.

(4) (a) No person subject to this code may be tried by a court-martial of which any member is junior to him or her in rank or grade, unless it cannot be avoided and then only by order of the governor.

(b) When convening a court-martial, the convening authority shall detail as members thereof those persons as, in his or her opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member is eligible to serve as a member of a general or special court-martial when he or she is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case. If within the command of the convening authority there is present and not otherwise disqualified a commissioned officer who is a member of the bar of this state and of appropriate rank and grade, the convening authority shall appoint him or her as president of a general or special court-martial. Although this requirement shall be binding on the convening authority, failure to meet it in any case shall not divest a military court of jurisdiction.

Source: L. 83: Entire article added, p. 1170, § 1, effective June 10. L. 2002: (3)(a) and (4) amended, p. 607, § 71, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 266-268, 272, 273.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-210. Military judge of a general or special court-martial.

(1) The authority convening a general or special court-martial shall request the state judge advocate general to detail as military judge thereof a commissioned officer who is a member of the bar of this state. No person is eligible to act as military judge in a case if he or she is the accuser or witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(2) The military judge may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he or she vote with the members of the court.

Source: L. 83: Entire article added, p. 1171, § 1, effective June 10. L. 2002: Entire section amended, p. 607, § 72, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 267.

28-3.1-211. Detail of trial and defense counsel.

(1) For each general or special court-martial, the authority convening the court shall request the state judge advocate general to detail trial counsel and defense counsel and assistants as he or she considers appropriate. No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(2) Trial counsel and defense counsel for a general or special court-martial shall be members of the bar of this state.

Source: L. 83: Entire article added, p. 1171, § 1, effective June 10. L. 2002: (1) amended, p. 608, § 73, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 269, 270.

C.J.S. See 6 C.J.S., Armed Services, §§ 295, 298.

28-3.1-212. Detail or employment of reporters and interpreters.

The convening authority of a general court-martial or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of testimony taken before that court or, in the alternative, may utilize sound recording equipment. The convening authority of a special court-martial may detail or employ qualified court reporters who shall record the proceedings of testimony taken before that court. The convening authority of a military court may appoint interpreters who shall interpret for the court.

Source: L. 83: Entire article added, p. 1171, § 1, effective June 10.

28-3.1-213. Absent and additional members.

(1) No member of a general or special court-martial may be absent or excused after the accused has been arraigned except for physical disability or as the result of a challenge or by order of the convening authority for good cause.

(2) Whenever a general court-martial is reduced below five members, the trial may not proceed unless the convening authority appoints new members sufficient in number to provide not less than five members. When the new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read to the court in the presence of the military judge, the accused, and counsel.

(3) Whenever a special court-martial is reduced below three members, the trial may not proceed unless the convening authority appoints new members sufficient in number to provide not less than three members. When the new members have been sworn, the trial may proceed as if no evidence has previously been introduced, unless a verbatim record of the testimony of previously examined witnesses or a stipulation thereof is read to the court in the presence of the accused and counsel.

Source: L. 83: Entire article added, p. 1172, § 1, effective June 10.

ANNOTATION

C.J.S. See 6 C.J.S., Armed Services, §§ 295, 298.

28-3.1-214. Charges and specifications.

(1) Charges and specifications shall be signed by an accuser subject to this code, under oath, before a commissioned officer of the state military force authorized to administer oaths and shall state:

(a) That the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(b) That they are true in fact to the best of his or her knowledge and belief.

(2) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the accused shall be informed of the charges against him or her as soon as practicable.

Source: L. 83: Entire article added, p. 1172, § 1, effective June 10. **L. 2002:** (1)(b) and (2) amended, p. 608, § 74, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 304-306.

C.J.S. See 6 C.J.S., Armed Services, §§ 295, 298.

28-3.1-215. Compulsory self-incrimination prohibited.

(1) No person subject to this code shall compel any person to incriminate himself or herself or to answer any question, the answer to which may tend to incriminate him or her.

(2) No person subject to this code may interrogate or request any statement from an accused or a person suspected of an offense without first informing the person of the nature of the accusation and advising the person that he or she does not have to make any statement regarding the offense of which he or she is accused or suspected, that any statement made by the person may be used as evidence against him or her in a trial by court-martial, that the person has a right to consult with a lawyer, that the person has a right to have a lawyer, and that upon the person's request a lawyer will be provided him or her without cost or, if the person prefers, he or she may retain counsel of his or her choice at his or her own expense.

(3) No person subject to this code may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade the person compelled.

(4) No statement obtained from any person in violation of this section or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against such person in a trial by court-martial.

(5) The requirements of this section are binding on all persons administering this code, but failure to follow them shall not divest a military court of jurisdiction.

Source: L. 83: Entire article added, p. 1172, § 1, effective June 10. L. 2002: (1), (2), and (4) amended, p. 608, § 75, effective May 24.

28-3.1-216. Investigation.

(1) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(2) The accused shall be advised of the charges against him or her and of his or her right to be represented by civilian counsel if provided by him or her, or by military counsel of his or her own selection if such counsel is reasonably available, or by counsel detailed by the state judge advocate. At that investigation, full opportunity shall be given to the accused to cross-examine witnesses against him or her if they are available and to present anything he or she may desire in his or her own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides, and a copy thereof shall be given to the accused.

(3) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (2) of this section, no further investigation of that charge is necessary under this section, unless it is demanded by the accused after he or she is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his or her own behalf.

(4) The requirements of this section are binding on all persons administering this code, but failure to follow them shall not divest a military court of jurisdiction.

Source: L. 83: Entire article added, p. 1173, § 1, effective June 10. L. 86: (1) amended, p. 1015, § 3, effective July 1. L. 2002: (2) and (3) amended, p. 608, § 76, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 310, 311.

C.J.S. See 6 C.J.S., Armed Services, §§ 289, 297, 298.

28-3.1-217. Forwarding of charges.

When a person is held for trial by general court-martial, the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation

and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, the commanding officer shall report in writing to that officer the reasons for delay.

Source: L. 83: Entire article added, p. 1173, § 1, effective June 10.

ANNOTATION

C.J.S. See 6 C.J.S., Armed Services, §§ 289, 297, 298.

28-3.1-218. Advice of state judge advocate and reference for trial.

(1) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to the state judge advocate general for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless he or she has found that the charge alleges an offense under this code and is warranted by evidence indicated in the report of the investigation.

(2) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections and changes in the charges and specifications needed to make them conform to the evidence may be made.

Source: L. 83: Entire article added, p. 1174, § 1, effective June 10. **L. 2002:** (1) amended, p. 609, § 77, effective May 24.

28-3.1-219. Service of charges.

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. No person shall, against his or her objection, be brought to trial or be required to participate by himself or herself or by counsel in a session called by the military judge under section 28-3.1-304 before a general court-martial within five days after the service of the charges upon him or her, or before a special court-martial within three days after the service of the charges upon him or her.

Source: L. 83: Entire article added, p. 1174, § 1, effective June 10. **L. 2002:** Entire section amended, p. 609, § 78, effective May 24.

TITLE 28 MILITARY AND VETERANS : [MILITARY](#) :
[ARTICLE 3.1 COLORADO CODE OF MILITARY JUSTICE](#) :
PART 3 TRIAL PROCEDURE

28-3.1-301. General procedures.

The procedure, including modes of proof, in cases before military courts and other military tribunals, may be prescribed by the governor by regulation and shall so far as practicable be the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of Colorado and in the trial of courts-martial of the United States, but such procedure may not be contrary to or inconsistent with this code.

Source: **L. 83:** Entire article added, p. 1174, § 1, effective June 10. **L. 2002:** (3) amended, p. 362, § 24, effective July 1.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 316.

C.J.S. See 6 C.J.S., Armed Services, §§ 289, 298.

28-3.1-302. Unlawfully influencing action of court.

(1) No authority convening a general, special, or summary court-martial, nor any other commanding officer or officer serving on the staff thereof, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court or with respect to any other exercise of their functions in the conduct of the proceeding. No person subject to this code may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof in reaching the findings or sentence in any case or the action of any convening, approving, or reviewing authority with respect to his or her judicial acts. The provisions of this subsection (1) shall not apply to general instructional or informational courses in military justice, if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial, or to statements and instructions given in open court by the military judge or counsel.

(2) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the state military forces should be retained on duty, no person subject to this code may, in preparing any such report:

(a) Consider or evaluate the performance of duty of any such member as a member, military judge, or trial counsel of a court-martial; except that this paragraph (a) is not applicable to evaluations made by the state judge advocate of the performance of personnel under his or her supervision;

(b) Give a less favorable rating or evaluation of any member of the military forces because of the zeal with which such member as counsel represented any accused before a court-martial.

Source: **L. 83:** Entire article added, p. 1174, § 1, effective June 10. **L. 2002:** (1) and (2)(a) amended, p. 609, § 79, effective May 24.

28-3.1-303. Duties of trial counsel and defense counsel.

(1) The trial counsel of a general or special court-martial shall prosecute in the name of the state and shall, under the direction of the court, prepare the record of proceedings.

(2) The accused has the right to be represented in his or her defense before a general or special court-martial by civilian counsel if provided by him or her, or by military counsel of his or her own selection if reasonably available, or by the defense counsel detailed under section 28-3.1-211. If the accused has counsel of his or her own selection, the defense counsel and assistant defense counsel, if any, who were detailed shall, if the accused so desires, act as his or her associate counsel; otherwise they shall be excused by the military judge.

(3) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of the matters he or she feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he or she considers appropriate.

(4) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he or she is qualified to be a trial counsel as required by section 28-3.1-211, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(5) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he or she is qualified to be the defense counsel as required by section 28-3.1-211, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

Source: L. 83: Entire article added, p. 1175, § 1, effective June 10. **L. 2002:** (2) to (5) amended, p. 610, § 80, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 269, 270.

28-3.1-304. Sessions.

(1) (a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may call the court into session without the presence of the members for:

(I) Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(II) Hearing and ruling upon any matter which may be ruled upon by the military judge, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(III) If permitted by the regulations of the governor, holding the arraignment and receiving the pleas of the accused; or

(IV) Performing any other procedural function which may be performed by the military judge pursuant to section 28-3.1-301 which does not require the presence of the members of the court.

(b) These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made part of the record.

(2) Whenever a general or special court-martial deliberates or votes, only the members of the court may be present. All other proceedings, including any consultation of the court with counsel or the military judge, shall be made part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and the military judge.

(3) Trial counsel, in the name of the state of Colorado, may file an interlocutory appeal in the supreme court of the state of Colorado from a ruling of the military judge granting a motion made by the accused in advance of trial for the return of property, the suppression of evidence, or the suppression of an extrajudicial confession or admission if trial counsel certifies to the military judge who granted the motion that the interlocutory appeal is not taken for the purpose of delay and said property or evidence is a substantial part of the proof of a charge pending against the accused.

Source: L. 83: Entire article added, p. 1175, § 1, effective June 10. **L. 87:** (3) added, p. 1176, § 1, effective April 16.

28-3.1-305. Continuances.

The military judge or a court-martial without a military judge may for reasonable cause grant a continuance to any party for such time and as often as appears just.

Source: L. 83: Entire article added, p. 1176, § 1, effective June 10.

28-3.1-306. Challenges.

(1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The court shall determine the relevancy and validity of challenges for cause and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) Both the accused and the trial counsel are entitled to one preemptory challenge, but the military judge may not be challenged except for cause.

Source: L. 83: Entire article added, p. 1176, § 1, effective June 10.

28-3.1-307. Oaths.

(1) Interpreters and, in general and special courts-martial, members, military judges, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, and reporters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully.

(2) Each witness before a military court shall be examined on oath or affirmation.

Source: L. 83: Entire article added, p. 1176, § 1, effective June 10.

28-3.1-308. Statute of limitations.

(1) A person charged with any offense under the code is not liable to be tried by court-martial or punished under section 28-3.1-114, if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under section 28-3.1-114.

(2) Notwithstanding the provisions of subsection (1) of this section, a prosecution for larceny and wrongful appropriation under section 28-3.1-538, against one who obtained property lawfully and subsequently misappropriated it, may be commenced within one year after discovery of the loss, but in no case shall this extend the time limitation by more than five years.

(3) Periods in which the accused was absent from territory in which the state has authority to apprehend him or her, or in the custody of civil authorities, or in the hands of the enemy of any hostile force shall be excluded in computing the period of limitation prescribed in this section.

(4) A person charged with desertion or absence without leave in time of national emergency or war, or with aiding the enemy, or with mutiny may be tried and punished at any time without limitation.

(5) Except as otherwise provided in this section, a person charged with desertion in time of peace or with the offenses punishable under section 28-3.1-535, 28-3.1-536, or 28-3.1-537 is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specification.

Source: L. 83: Entire article added, p. 1176, § 1, effective June 10. **L. 2002:** (3) amended, p. 610, § 81, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 302.

28-3.1-309. Former jeopardy.

(1) No person may be tried a second time in any military court for the same offense.

(2) No proceeding in which an accused has been found guilty by a court-martial upon any charges or specification is a trial for purposes of this section until the finding of guilty has become final after review of the case has been fully completed.

(3) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial for purposes of this section.

Source: L. 83: Entire article added, p. 1177, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 279.

28-3.1-310. Pleas of the accused.

(1) If an accused, after arraignment, makes an irregular pleading or, after a plea of guilty, sets up matter inconsistent with the plea, or if it appears that an accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if an accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he or she had pleaded not guilty.

(2) With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may, if permitted by the regulations of the governor, be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to the announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

Source: L. 83: Entire article added, p. 1177, § 1, effective June 10. **L. 2002:** (1) amended, p. 611, § 82, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 318.

28-3.1-311. Opportunity to obtain witnesses and other evidence.

(1) The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with regulations the governor prescribes.

(2) The military judge of a court-martial or a summary court-martial may:

(a) Issue a warrant for the arrest of any accused person who, having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;

(b) Issue subpoenas duces tecum and other subpoenas;

(c) Enforce the attendance of witnesses and the production of books and papers.

Source: L. 83: Entire article added, p. 1177, § 1, effective June 10.

28-3.1-312. Refusal to appear or testify.

(1) Any person not subject to this code who has been subpoenaed to appear as a witness or to produce books and records before a military court or before a military or civil officer designated to take a deposition to be read in

evidence before such a court and who willfully neglects or refuses to appear, refuses to qualify as a witness, refuses to testify, or refuses to produce any evidence commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) Upon the certification of the facts in subsection (1) of this section by the military court or tribunal to the district attorney of the county where the offense occurred, the district attorney shall prosecute the accused in any court of record, and jurisdiction is hereby conferred upon such courts for this purpose.

Source: L. 83: Entire article added, p. 1177, § 1, effective June 10. **L. 2002:** (1) amended, p. 1541, § 283, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

28-3.1-313. Contempt.

A military court may punish for contempt any person who willfully and unlawfully refuses to be sworn as a witness, or who refuses to answer any legal or proper question, or who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by a riot or disorder. The punishment shall not exceed confinement for thirty days or a fine of one hundred dollars, or both.

Source: L. 83: Entire article added, p. 1178, § 1, effective June 10.

28-3.1-314. Depositions.

(1) At any time after charges have been signed as provided in section 28-3.1-214, any party may take oral or written depositions, unless an authority competent to convene a court-martial for the trial of those charges forbids such depositions for good cause. If a deposition is to be taken before charges are referred for trial, such authority shall designate lawyers to represent the prosecution and the defense.

(2) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(3) Depositions shall be taken and authenticated by any military or civil officer authorized by the laws of the state or by the laws of the place where the deposition is taken to administer oaths.

(4) An authenticated deposition taken upon reasonable notice to the other parties, if otherwise admissible under the rules of evidence, may be used in evidence before any court-martial or in any proceeding before a court of inquiry.

Source: L. 83: Entire article added, p. 1178, § 1, effective June 10.

28-3.1-315. Admissibility of records of courts of inquiry.

Records of courts of inquiry are not admissible as evidence in any court-martial.

Source: L. 83: Entire article added, p. 1178, § 1, effective June 10.

28-3.1-316. Voting and rulings.

(1) Voting by members of a general or special court-martial on questions of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member in rank of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(2) The military judge of a general or special court-martial shall rule upon interlocutory questions, other than a challenge, arising during the proceedings. Any ruling made by the military judge upon any interlocutory question, other than a motion for a finding of not guilty or the question of the accused's sanity, is final and constitutes the ruling of the court. However, the military judge may change the ruling at any time during the trial; except that he or she may not change a ruling on a motion for a finding of not guilty that was granted. Unless the ruling is final, if any

member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section 28-3.1-317, beginning with the junior member in rank.

(3) Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court:

(a) That the accused must be presumed to be innocent until his or her guilt is established by legal and competent evidence beyond reasonable doubt;

(b) That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he or she must be acquitted;

(c) That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(d) That the burden of proof of establishing the guilt of the accused beyond reasonable doubt is upon the prosecution.

(4) The provisions of subsections (1), (2), and (3) of this section shall not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum decision is filed, it shall be sufficient if the findings of fact appear therein.

Source: L. 83: Entire article added, p. 1178, § 1, effective June 10. **L. 2002:** (2), (3)(a), and (3)(b) amended, p. 611, § 83, effective May 24.

28-3.1-317. Number of votes required.

(1) No person may be convicted of an offense except by the unanimous concurrence of the members present at the time the vote is taken.

(2) All sentences shall be determined by the vote of two-thirds of the members present at the time the vote is taken.

(3) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

Source: L. 83: Entire article added, p. 1179, § 1, effective June 10.

28-3.1-318. Court to announce action.

A court-martial shall announce its findings and sentence to the parties as soon as determined.

Source: L. 83: Entire article added, p. 1179, § 1, effective June 10.

28-3.1-319. Record of trial.

General and special courts-martial shall keep a verbatim record of the trial of each case. Upon a request of the accused, a reviewing authority, or the state judge advocate general, the record shall be transcribed and authenticated by the president or the military judge. If the record cannot be authenticated by either the president or the military judge by reason of his or her death, disability, or absence, it shall be authenticated by two members of the court. In all other courts-martial, records of trial shall contain such matter and be authenticated in such manner as the governor prescribes by regulation.

Source: L. 83: Entire article added, p. 1179, § 1, effective June 10. **L. 2002:** Entire section amended, p. 611, § 84, effective May 24.

TITLE 28 MILITARY AND VETERANS : [MILITARY](#) :
[ARTICLE 3.1 COLORADO CODE OF MILITARY JUSTICE](#) :
PART 4 SENTENCES

28-3.1-401. Cruel and unusual punishments prohibited.

Cruel and unusual punishment may not be adjudged by any court-martial or inflicted upon any person subject to this code.

Source: **L. 83:** Entire article added, p. 1180, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 328.

28-3.1-402. Maximum limits.

The punishment which a court-martial may direct for an offense shall not exceed limits prescribed by this code.

Source: **L. 83:** Entire article added, p. 1180, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 327.

28-3.1-403. Effective date of sentences.

(1) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances, in addition to confinement not suspended, the forfeiture may apply to pay and allowances becoming due before or after the date the sentence is approved by the convening authority.

(2) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended shall be excluded in computing the service of the terms of confinement.

(3) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his or her jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in his or her sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his or her jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(4) All other sentences of court-martial are effective on the date ordered executed. In no case may a sentence be executed until final action is taken on review.

(5) In the militia or state military forces not in federal service, no sentence of dismissal or dishonorable discharge may be executed until it is approved by the governor.

Source: **L. 83:** Entire article added, p. 1180, § 1, effective June 10. **L. 2002:** (3) amended, p. 611, § 85, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 330.

28-3.1-404. Execution of confinement.

(1) A sentence of confinement adjudged by a military court may be carried into execution by confinement in any place of confinement under the control of any of the forces of the state military forces or in any jail, penitentiary, or prison designated for that purpose. Persons so confined in a jail, penitentiary, or prison are subject to the same discipline and treatment as persons confined or committed to the jail, penitentiary, or prison by the courts of the state.

(2) The omission of the words "hard labor" from any sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.

(3) The keepers, sheriffs, officers, and wardens of city or county jails and of all other jails, penitentiaries, or prisons designated by the convening authority shall receive persons ordered into confinement before trial or persons committed to confinement by a military court and shall confine them according to law.

Source: L. 83: Entire article added, p. 1180, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 329.

C.J.S. See 6 C.J.S., Armed Services, §§ 289, 298.

28-3.1-405. Commitment under sentence of confinement.

When a sentence of confinement is imposed to be served other than in a guardhouse, the convening authority shall issue a writ in the following or similar form:

STATE OF _____)
) ss.
_____ COUNTY OF _____)
To the Sheriff of County, , State of Colorado.
WHEREAS, of in the County of , a member of the Colorado National Guard,
was on the day of , 20_, tried by court-martial and found guilty of in
violation of the Colorado Military Code and was sentenced to serve days
imprisonment; and
WHEREAS, as such sentence was approved and ordered executed by the
convening authority, on the day of , 20_;
THEREFORE, you were commanded to take the body of the said and commit
him or her to the keeper of the jail, who is hereby commanded to receive the
body of the said and keep him or her safely for the term of days, after which
he or she shall be released.
Fail not, but do as herein commanded and make a return within sixty (60)
days from this date.
Dated at , in the County of this day of , 20_.

Source: L. 83: Entire article added, p. 1181, § 1, effective June 10. **L. 2002:** Entire section amended, p. 612, § 86, effective May 24.

28-3.1-406. Collection of fines.

(1) All fines imposed as a sentence of a court-martial shall be paid at the time of approval of the sentence by the convening authority.

(2) The commitment to the county jail for nonpayment of fines shall be in the following or similar form:

STATE OF _____)
) ss.

____ COUNTY OF _____)

To the Sheriff of County , State of Colorado.

WHEREAS, of in the County of , a member of the Colorado National Guard, was on the day of , 20_, tried by court-martial and found guilty of in violation of the Colorado Military Code and was sentenced to pay a fine of Dollars; and

WHEREAS, such fine has not been paid;

NOW, THEREFORE, by authority of the State of Colorado, you are hereby commanded to take the body of the said and commit it to the keeper of the jail in the County of , who is hereby commanded to receive the body of the said and keep him or her safely until he or she pays the sum above mentioned, or shall have served one (1) day for each dollar of said fine, after which time he or she shall be released.

Fail not, but make service and return within sixty (60) days from this date.

Dated at , in the County of this day of , 20_.

Source: L. 83: Entire article added, p. 1181, § 1, effective June 10. **L. 2002:** (2) amended, p. 612, § 87, effective May 24.

28-3.1-407. Initial action on the record.

After a trial by court-martial, the record shall be forwarded to the convening authority, as reviewing authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or the governor. The reviewer may approve the sentence or such part, amount, or commuted form of the sentence as he or she sees fit and may suspend or defer the execution of the sentence.

Source: L. 83: Entire article added, p. 1182, § 1, effective June 10. **L. 2002:** Entire section amended, p. 613, § 88, effective May 24.

28-3.1-408. Reconsideration and revision.

(1) If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(2) (a) Where there is an apparent error or omission in the record, or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action.

(b) In no case, however, may the record be returned:

(I) For reconsideration of a finding of not guilty or a ruling which amounts to a finding of not guilty; or

(II) For reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of the code; or

(III) For increasing the severity of the sentence, unless the sentence prescribed for the offense is mandatory.

Source: L. 83: Entire article added, p. 1182, § 1, effective June 10.

28-3.1-409. Rehearings.

(1) If the convening authority disapproves the findings and sentence of a court-martial, he or she may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case, he or she shall state the reasons for disapproval. If he or she disapproves the findings and sentence and does not order a rehearing, he or she shall dismiss the charges.

(2) Each rehearing shall take place before a court-martial whose composition shall not include any member or military judge of the court-martial which first heard the case. Upon a rehearing, the accused may not be tried for any offense of which he or she was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed unless the sentence is based upon a finding of guilty of an offense considered upon the merits in the original proceedings or unless the sentence prescribed for the offense is mandatory.

Source: L. 83: Entire article added, p. 1182, § 1, effective June 10. L. 2002: Entire section amended, p. 613, § 89, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 342

28-3.1-410. Approval by the convening authority.

In acting on the findings and sentence of a court-martial, the convening authority may approve only those findings and the sentence or part or amount of the sentence which he or she finds correct in law and fact. Unless he or she indicates otherwise, approval of the sentence is approval of the findings and sentence.

Source: L. 83: Entire article added, p. 1182, § 1, effective June 10. L. 2002: Entire section amended, p. 613, § 90, effective May 24.

28-3.1-411. Review of records - disposition.

(1) If the convening authority is the governor, he or she shall refer the record of courts-martial to the state judge advocate general who shall submit his or her written opinion to the governor. If the final action of the court has resulted in acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction. After consideration of the opinion, the governor's action on review of any record is final.

(2) (a) Except as provided in subsection (1) of this section, the convening authority shall refer the record of a general court-martial to the staff judge advocate designated by the state judge advocate general who shall submit his or her written opinion to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction. When the convening authority has taken final action, he or she shall forward the entire record, including his or her action thereon and the opinion of the staff judge advocate, to the state judge advocate general for review.

(b) In a case reviewable by the state judge advocate general under this section, the staff judge advocate may act only with respect to the findings and sentence as approved by the convening authority. He or she may affirm only the findings of guilty and the sentence or part or amount of the sentence which he or she finds correct in law and fact and determined on the basis of the entire record. In considering the record, he or she may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the staff judge advocate sets aside the findings and sentence, he or she may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he or she sets aside the findings and sentence and does not order a rehearing, he or she shall order that the charges be dismissed.

(c) The state judge advocate general shall instruct the convening authority to act in accordance with his or her decision on the review. If he or she has ordered a rehearing, but the convening authority finds a rehearing impracticable, he or she may dismiss the charges.

(3) Except as provided in subsection (1) of this section, the convening authority of any summary or special court-martial, after taking final action on review, shall forward the entire record, including his or her action thereon, to the staff judge advocate designated by the state judge advocate general. With respect to such record, the staff judge advocate shall have the same duties and powers as provided for the state judge advocate general in paragraphs (b) and (c) of subsection (2) of this section.

(4) The state judge advocate general may order one or more boards of review, each composed of not less than three commissioned officers of the state military forces, or retired members of the military forces, or members of the

United States Air Forces or United States Army reserve, each of whom must be a member of the bar of this state. Each board of review shall review the record of any trial by special court-martial referred to it by the state judge advocate general. Boards of review shall have the same authority on review as the state judge advocate general has under subsection (2) of this section.

Source: **L. 83:** Entire article added, p. 1183, § 1, effective June 10. **L. 2002:** (1), (2), and (3) amended, p. 614, § 91, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 332, 334, 335, 337, 338, 340.

28-3.1-412. Review counsel.

(1) Upon the final review of a sentence of any court-martial, the accused has the right to be represented by counsel before the reviewing authority, before the staff judge advocate, and before the state judge advocate general.

(2) Upon the request of an accused, the state judge advocate general shall appoint a lawyer who is a member of the state military forces and who has the qualifications prescribed in section 28-3.1-211 if available, to represent the accused before the reviewing authority, before the staff judge advocate, and before the state judge advocate general in the review of cases specified in subsection (1) of this section.

(3) The accused may be represented by civilian counsel, provided at his or her expense, before the reviewing authority, before the staff judge advocate, and before the state judge advocate general.

Source: **L. 83:** Entire article added, p. 1184, § 1, effective June 10. **L. 2002:** (3) amended, p. 615, § 92, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 269, 270.

28-3.1-413. Review by governor.

Notwithstanding review procedures provided in this code, in any case where no right to review by the governor exists, the accused may, within thirty days after final action is taken by any reviewing authority, petition the governor to review such final action. The governor may take action as he or she deems appropriate. Failure of the governor to act within thirty days shall constitute a denial.

Source: **L. 83:** Entire article added, p. 1184, § 1, effective June 10. **L. 2002:** Entire section amended, p. 615, § 93, effective May 24.

28-3.1-414. Error of law - lesser included offense.

(1) A finding or sentence of a court-martial shall not be held incorrect on the ground of an error of law, unless the error materially prejudices the substantial rights of the accused.

(2) Any reviewing authority with the power to affirm a finding of guilty may affirm so much of the findings as includes a lesser included offense.

Source: **L. 83:** Entire article added, p. 1184, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 332, 334, 337.

28-3.1-415. Vacation of suspension of sentence.

(1) Before the vacation of the suspension of any court-martial sentence, the officer having court-martial jurisdiction over a probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel, if he or she so desires.

(2) The record of the hearing and the recommendation of the officer having court-martial jurisdiction shall be sent for action to the state judge advocate in cases involving a general court-martial sentence. If the state judge advocate vacates the suspension, any unexecuted part of the sentence shall be executed.

(3) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

Source: **L. 83:** Entire article added, p. 1184, § 1, effective June 10. **L. 2002:** (1) amended, p. 615, § 94, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 341.

28-3.1-416. Petition for a new trial.

At any time within two years after approval by the convening authority of a court-martial sentence, the accused may petition the governor for a new trial on grounds of newly discovered evidence or fraud on the court-martial.

Source: **L. 83:** Entire article added, p. 1184, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 343.

28-3.1-417. Remission and suspension.

(1) A convening authority may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures.

(2) The governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

Source: **L. 83:** Entire article added, p. 1184, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 341.

28-3.1-418. Restoration.

(1) Under regulations prescribed by the governor, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, may be restored, unless a new trial or rehearing is ordered and the executed part is included in a sentence imposed upon a new trial or rehearing.

(2) If a previously executed sentence of dishonorable discharge or other punitive discharge is not imposed on a new trial, the governor shall substitute a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his or her enlistment.

(3) If a previously executed sentence of dismissal is not imposed on a new trial, the governor shall substitute a form of discharge authorized for administrative issue, and a commissioned officer dismissed by that sentence may

be reappointed only by the governor to the commissioned grade and rank as that former officer would have attained had he or she not been dismissed. The reappointment of such a former officer may be made if a position vacancy is available under applicable tables of organization. All time between the dismissal and reappointment shall be considered as service for all state purposes.

Source: **L. 83:** Entire article added, p. 1185, § 1, effective June 10. **L. 2002:** (2) and (3) amended, p. 615, § 95, effective May 24.

28-3.1-419. Finality of proceedings, findings, and sentences.

The proceedings, findings, and sentences of courts-martial as reviewed and approved as required by this code and all dismissals and discharges carried into execution under sentences by courts-martial following review and approval as required by this code are final. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the state, subject only to action upon a petition for a new trial as provided by section 28-3.1-416 or action taken on appeal as provided by section 28-3.1-420.

Source: **L. 83:** Entire article added, p. 1185, § 1, effective June 10. **L. 87:** Entire section amended, p. 1176, § 2, effective April 16.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 353.

C.J.S. See 6 C.J.S., Armed Services, §§ 297, 298.

28-3.1-420. Appeal following review and approval.

(1) The accused, within thirty days after the date the final reviewing authority takes action, may take an appeal to the supreme court of the state of Colorado pursuant to the Colorado appellate rules.

(2) When the accused petitions the governor pursuant to section 28-3.1-413 to review the final action of the reviewing authority, the time for filing notice of appeal is extended until thirty days after the governor announces his or her action or the petition is denied due to the governor's failure to act. No action or failure to act by the governor shall form the basis for appeal, nor shall the supreme court order review by the governor.

Source: **L. 87:** Entire section added, p. 1177, § 3, effective April 16. **L. 2002:** (2) amended, p. 615, § 96, effective May 24.

TITLE 28 MILITARY AND VETERANS : [MILITARY](#) :
[ARTICLE 3.1 COLORADO CODE OF MILITARY JUSTICE](#) :
PART 5 PUNITIVE ARTICLE

28-3.1-501. Principal defined.

A "principal", as used in this code, means any person punishable under this code who commits an offense punishable by this code or intentionally aids, abets, counsels, commands, or procures its commission or intentionally causes an act to be done which if directly performed by him or her would be punishable by this code.

Source: **L. 83:** Entire article added, p. 1185, § 1, effective June 10. **L. 2002:** Entire section amended, p. 615, § 97, effective May 24.

28-3.1-502. Abetting offenders.

Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his or her apprehension, trial, or punishment shall be punished as a court-martial directs.

Source: **L. 83:** Entire article added, p. 1185, § 1, effective June 10. **L. 2002:** Entire section amended, p. 616, § 98, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331.

28-3.1-503. Charges - offenses included.

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or of an offense necessarily included therein, but not both.

Source: **L. 83:** Entire article added, p. 1185, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 304-306.

28-3.1-504. Attempt to commit offense.

(1) An act, done with specific intent to commit an offense under this code, amounting to more than mere preparation and tending even though failing to effect its commission, is an attempt to commit that offense.

(2) Any person subject to this code who attempts to commit any offense punishable by this code shall be punished as a court-martial directs, unless otherwise specifically prescribed.

(3) Any person subject to this code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

Source: **L. 83:** Entire article added, p. 1186, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 359.

C.J.S. See 6 C.J.S., Armed Services, §§ 297, 298.

28-3.1-505. Conspiracy to commit offense.

Any person subject to this code who conspires with any other person to commit an offense under this code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1186, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 359.

C.J.S. See 6 C.J.S., Armed Services, §§ 297, 298.

28-3.1-506. Solicitation.

(1) Any person subject to this code who solicits or advises another to desert in violation of section 28-3.1-509 or mutiny in violation of section 28-3.1-518 shall be punished as a court-martial directs.

(2) Any person subject to this code who solicits or advises another to commit an act of misbehavior before the enemy or any hostile force in violation of section 28-3.1-523 or sedition in violation of section 28-3.1-518 shall be punished as court-martial directs.

Source: L. 83: Entire article added, p. 1186, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 359.

28-3.1-507. Fraudulent enlistment, appointment, or separation.

(1) Any person shall be punished as a court-martial directs if he or she:

(a) Procures his or her own enlistment or appointment in the state military forces by knowingly false representation or deliberate concealment as to his or her qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(b) Procures his or her own separation from the state military forces by knowingly false representation or deliberate concealment as to his or her eligibility for that separation.

Source: L. 83: Entire article added, p. 1186, § 1, effective June 10. **L. 2002:** Entire section amended, p. 616, § 99, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 282, 359.

C.J.S. See 6 C.J.S., Armed Services, § 290.

28-3.1-508. Unlawful enlistment, appointment, or separation.

Any person subject to this code who effects an enlistment or appointment in or a separation from the state military forces of any person who is known to him or her to be ineligible for such enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1186, § 1, effective June 10. **L. 2002:** Entire section amended, p. 616, § 100, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 290.

28-3.1-509. Desertion.

(1) Any member of the state military forces is guilty of desertion if he or she:

(a) Without authority, goes or remains absent from his or her unit, organization, or place of duty with intent to remain away therefrom permanently; or

(b) Quits his or her unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(c) Without being regularly separated from one of the state military forces, enlists or accepts an appointment in the same or another one of the state military forces or in one of the armed forces of the United States without fully disclosing the fact that he or she has not been regularly separated.

(2) Any commissioned officer of the state military forces who, after tender of his or her resignation and before notice of its acceptance, quits his or her post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(3) Any person found guilty of desertion or attempt to desert shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1186, § 1, effective June 10. **L. 2002:** (1) and (2) amended, p. 616, § 101, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 281, 299, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-510. Absence without leave.

(1) Any person subject to this code shall be punished as a court-martial directs when he or she, without authority:

(a) Fails to go to his or her appointed place of duty at the time prescribed;

(b) Goes from that place; or

(c) Absents himself or herself or remains absent from his or her unit, organization, or place of duty at which he or she is required to be at the time prescribed.

Source: L. 83: Entire article added, p. 1187, § 1, effective June 10. **L. 2002:** IP(1), (1)(a), and (1)(c) amended, p. 617, § 102, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-511. Failure to embark.

Any person subject to this code who, through neglect or design, misses the movement of a ship, aircraft, or unit with which he or she is required in the course of duty to move shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1187, § 1, effective June 10. **L. 2002:** Entire section amended, p. 617, § 103, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-512. Contempt towards officials.

Any person subject to this code who uses contemptuous words against the president of the United States or the governor which may detrimentally affect the morale or effectiveness of any unit of the state military forces shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1187, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-513. Disrespect towards superior commissioned officer.

Any person subject to this code who behaves with disrespect towards his or her superior commissioned officers shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1187, § 1, effective June 10. **L. 2002:** Entire section amended, p. 617, § 104, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-514. Assaulting or willfully disobeying superior commissioned officer.

(1) Any person subject to this code shall be punished as a court-martial directs if he or she:

(a) Strikes his or her superior commissioned officer or draws or lifts up any weapon or offers any violence against such officer while he or she is in the execution of his or her office; or

(b) Willfully disobeys a lawful command of his or her superior commissioned officer.

Source: L. 83: Entire article added, p. 1187, § 1, effective June 10. **L. 2002:** Entire section amended, p. 617, § 105, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-515. Insubordinate conduct toward warrant officer or noncommissioned officer.

(1) Any warrant officer or enlisted member shall be punished as a court-martial directs if he or she:

(a) Strikes or assaults a warrant officer or noncommissioned officer while that officer is in the execution of his or her office; or

(b) Willfully disobeys the lawful order of a warrant officer or noncommissioned officer; or

(c) Treats with contempt or is disrespectful in language or deportment toward a warrant officer or noncommissioned officer while that officer is in the execution of his or her office.

Source: L. 83: Entire article added, p. 1187, § 1, effective June 10. **L. 2002:** IP(1), (1)(a), and (1)(c) amended, p. 617, § 106, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-516. Dereliction of duty.

Any person subject to this code who violates or fails to obey any lawful general order or regulation, including an order to report for state active duty, shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1188, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-517. Maltreatment of inferiors.

Any person subject to this code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his or her orders shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1188, § 1, effective June 10. **L. 2002:** Entire section amended, p. 618, § 107, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-518. Mutiny - sedition.

(1) Any person subject to this code who, with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his or her duty or creates any violence or disturbance is guilty of mutiny.

(2) Any such person who, with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against such authority is guilty of sedition.

(3) Any such person who fails to do his or her utmost to prevent and suppress a mutiny or sedition being committed in his or her presence or fails to take all reasonable means to inform his or her superior commissioned officer or commanding officer of a mutiny or sedition which he or she knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(4) Any person who is found guilty of attempted mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial directs.

Source: **L. 83:** Entire article added, p. 1188, § 1, effective June 10. **L. 2002:** (1) and (3) amended, p. 618, § 108, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-519. Resisting arrest - escape from custody.

Any person subject to this code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court-martial directs.

Source: **L. 83:** Entire article added, p. 1188, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-520. Unlawful release of prisoners.

Any person subject to this code who, without proper authority, releases any prisoner committed to his or her charge or who, through neglect or design, suffers any such prisoner to escape shall be punished as a court-martial directs, whether or not the prisoner was committed in strict compliance with law.

Source: **L. 83:** Entire article added, p. 1188, § 1, effective June 10. **L. 2002:** Entire section amended, p. 618, § 109, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-521. Unlawful detention of another.

Any person subject to this code who, except as provided by law, apprehends, arrests, or confines any person shall be punished as a court-martial directs.

Source: **L. 83:** Entire article added, p. 1188, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-522. Noncompliance with procedural rules.

Any person subject to this code who is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this code or knowingly and intentionally fails to enforce or comply with any provision of this code regulating the proceedings before, during, or after trial of an accused shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1188, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-523. Misbehavior before the enemy or any hostile force.

(1) Any person subject to this code shall be punished as a court-martial directs when he or she, before or in the presence of the enemy or any hostile force:

(a) Runs away;

(b) Abandons, surrenders, or delivers up any command, unit, place, or military property which it is his or her duty to defend;

(c) Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(d) Casts away his or her arms or ammunition;

(e) Is guilty of cowardly conduct;

(f) Quits his or her place of duty to plunder or pillage;

(g) Causes false alarms in any command, unit, or place under control of the armed forces of the United States or the state military forces;

(h) Willfully fails to do his or her utmost to encounter, engage, capture, or destroy any enemy troops, hostile forces, combatants, vessels, aircraft, or any other thing, which it is his or her duty so to encounter, engage, capture, or destroy; or

(i) Does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies or the state or to any other state, when engaged in battle.

Source: L. 83: Entire article added, p. 1188, § 1, effective June 10. **L. 2002:** IP(1), (1)(b), (1)(d), (1)(f), and (1)(h) amended, p. 618, § 110, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-524. Subordinate compelling surrender.

Any person subject to this code who compels or attempts to compel the commander of any of the state military forces to surrender to an enemy or any hostile force or who strikes the colors or flag to any enemy or any hostile force without proper authority shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1189, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-525. Improper use of countersign.

Any person subject to this code who discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his or her knowledge, he or she was authorized and required to give, shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1189, § 1, effective June 10. **L. 2002:** Entire section amended, p. 619, § 111, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-526. Forcing a safeguard.

Any person subject to this code who forces a safeguard shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1189, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-527. Captured or abandoned property.

(1) All persons subject to this code shall secure all property taken from the enemy or any hostile force and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(2) Any person subject to this code shall be punished as a court-martial directs if he or she:

(a) Fails to carry out the duties prescribed in subsection (1) of this section;

(b) Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property whereby he or she receives or expects any profit, benefit, or advantage to himself or herself or another directly or indirectly connected with himself or herself; or

(c) Engages in looting or pillaging.

Source: L. 83: Entire article added, p. 1189, § 1, effective June 10. **L. 2002:** IP(2) and (2)(b) amended, p. 619, § 112, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-528. Aiding the enemy or any hostile force.

Any person who aids or attempts to aid the enemy or any hostile force with arms, ammunition, supplies, money, or other thing or who without proper authority knowingly harbors, or protects, or gives intelligence to, or communicates or corresponds with, or holds any intercourse with the enemy or any hostile force, either directly or indirectly, shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1189, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-529. Misconduct of a prisoner.

(1) Any person subject to this code shall be punished as a court-martial directs when he or she, while in the hands of the enemy or any hostile force:

(a) For the purpose of securing favorable treatment by his or her captors, acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others held by the enemy or any hostile force as civilian or military prisoners; or

(b) While in a position of authority over prisoners maltreats them without justifiable cause.

Source: L. 83: Entire article added, p. 1190, § 1, effective June 10. **L. 2002:** Entire section amended, p. 619, § 113, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-530. Falsification of official documents.

Any person subject to this code who, with intent to deceive, signs any false record, return, regulation, order, or other official document knowing the same to be false or makes any other false official statement knowing the same to be false shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1190, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-531. Military property - loss, damage, destruction, or wrongful disposition.

Any person subject to this code who without proper authority sells or otherwise disposes of, willfully or through neglect damages, destroys, or loses, or willfully or through neglect suffers to be damaged, destroyed, sold, or

wrongfully disposed of any military property of the United States or of the state shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1190, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-532. Waste, spoilage, or destruction of property other than military.

Any person subject to this code who while on duty status willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States or of the state shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1190, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-533. Driving while intoxicated - reckless driving.

Any person subject to this code who operates any vehicle while drunk or in a reckless or wanton manner shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1190, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-534. Intoxicated on duty - leaving or sleeping on post.

Any person subject to this code who is found drunk on duty or sleeping upon his or her post or who leaves his or her post before he or she is regularly relieved shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1190, § 1, effective June 10. **L. 2002:** Entire section amended, p. 619, § 114, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-535. Malingering.

Any person subject to this code who, for the purpose of avoiding work, duty, or service, feigns illness, physical disablement, mental lapse, or derangement or intentionally inflicts self-injury shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1190, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-536. Riot - breach of peace.

Any person subject to this code who causes or participates in any riot or breach of the peace shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1190, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

Law reviews. For article, "The Martial Law in Colorado", see 5 Den. B. Ass'n Rec. 4 (Feb. 1928).

Annotator's note. Since § 28-3.1-536 is similar to repealed § 28-3-1133, relevant cases construing that provision have been included with the annotations to this section.

Governor's declaration that a state of insurrection exists is conclusive of that fact. *Moyer v. Peabody*, 212 U.S. 78, 29 S. Ct. 235, 53 L. Ed. 410 (1909).

Militia may arrest and imprison participants. Where the governor has declared an insurrection to exist, the militia has authority to arrest and imprison any person participating in or aiding and abetting such insurrection and to detain such person in custody until the insurrection is suppressed. *In re Moyer*, 35 Colo. 159, 85 P. 190 (1905).

If arrests are made in good faith, governor is not liable. So long as arrests of those whom the governor considers to stand in the way of restoring peace are made in good faith and in the honest belief that they are needed in order to head the insurrection off, the governor is the final judge and cannot be subjected to an action after he is out of office on the ground that he has not reasonable ground for his belief. *Moyer v. Peabody*, 212 U.S. 78, 29 S. Ct. 235, 53 L. Ed. 410 (1909).

28-3.1-537. Provoking or reproachful words.

Any person subject to this code who uses provoking or reproachful words or gestures towards any other person subject to this code shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1190, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-538. Larceny and wrongful appropriation.

(1) Any person subject to this code who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind: With intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his or her own use or the use of any person other than the owner, is guilty of larceny; or, with intent temporarily to

deprive or defraud another person of the use and benefit of property or to appropriate it to his or her own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(2) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1191, § 1, effective June 10. **L. 2002:** (1) amended, p. 619, § 115, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-539. Robbery.

Any person subject to this code who with intent to steal takes anything of value from the person or in the presence of another against his or her will, by means of force or violence or fear of immediate or future injury to his or her person or property or to the person or property of a relative or member of his or her family or of anyone in his or her company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1191, § 1, effective June 10. **L. 2002:** Entire section amended, p. 620, § 116, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-540. Forgery.

Any person subject to this code who, with intent to defraud, falsely makes or alters any signature to any writing or any part thereof which would, if genuine, apparently impose a legal liability on another or change his or her legal right or liability to his or her prejudice or utters, offers, issues, or transfers such a writing, known to him or her to be so made or altered, is guilty of forgery and shall be punished as a court-martial may direct.

Source: L. 83: Entire article added, p. 1191, § 1, effective June 10. **L. 2002:** Entire section amended, p. 620, § 117, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-541. Maiming.

Any person subject to this code who, with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which seriously disfigures his or her person by any mutilation thereof, destroys or disables any member or organ of his or her body, or seriously diminishes his or her physical vigor by the injury of any member or organ is guilty of maiming and shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1191, § 1, effective June 10. **L. 2002:** Entire section amended, p. 620, § 118, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-542. Arson.

(1) Any person subject to this code who willfully and maliciously burns or sets on fire an inhabited dwelling or any other structure, movable or immovable, wherein to the knowledge of the offender there is at the time a human being is guilty of aggravated arson and shall be punished as a court-martial directs.

(2) Any person subject to this code who willfully and maliciously burns or sets fire to the property of another, except as provided in subsection (1) of this section, is guilty of simple arson and shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1191, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-543. Extortion.

Any person subject to this code who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1191, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-544. Assault.

(1) Any person subject to this code who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial directs.

(2) Any person subject to this code who commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm or commits an assault and intentionally inflicts grievous bodily harm with or without a weapon is guilty of aggravated assault and shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1191, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-545. Burglary.

Any person subject to this code who, with intent to commit an offense punishable under this part 5, breaks and enters the dwelling house of another is guilty of burglary and shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1192, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-546. Perjury.

Any person subject to this code who in a judicial proceeding or in a course of justice conducted under this code willfully gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial directs.

Source: L. 83: Entire article added, p. 1192, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-547. Frauds against the government.

(1) Any person subject to this code shall be punished as a court-martial directs if he or she:

(a) Knowing it to be false or fraudulent, makes any claim against the United States, the state, or any officer thereof or presents to any person in the civil or military service, for approval or payment, any claim against the United States, the state, or any officer thereof;

(b) For the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the state, or any officer thereof, makes or uses any writing or other paper knowing it to contain any false or fraudulent statements, makes any oath to any fact or to any writing or other paper knowing the oath to be false, or forges or counterfeits any signature upon any writing or other paper or uses any such signature knowing it to be forged or counterfeited;

(c) Having charge, possession, custody, or control of any money or other property of the United States or the state, furnished or intended for the armed forces of the United States or the state military forces, knowingly delivers to any person having authority to receive it any amount thereof less than that for which he or she receives a certificate or receipt; or

(d) Being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state, furnished or intended for the armed forces of the United States or the state military forces, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the state.

Source: L. 83: Entire article added, p. 1192, § 1, effective June 10. **L. 2002:** IP(1) and (1)(c) amended, p. 620, § 119, effective May 24.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-548. Conduct unbecoming an officer.

Any commissioned officer who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial directs.

Source: **L. 83:** Entire article added, p. 1192, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-549. Cognizance of disreputable conduct.

Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the state military forces and all conduct of a nature to bring discredit upon the state military forces, of which persons subject to this code may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of such court. However, cognizance may not be taken of, and jurisdiction may not be extended to, any offense which constitutes a felony under the laws of this state where the local prosecuting authority has initiated a criminal action against the accused in the same matter. Where such an action has not been initiated against the accused, trial counsel shall give notice to the local prosecuting authority that a court-martial has taken cognizance of the offense and shall certify to the court-martial that such notice was given.

Source: **L. 83:** Entire article added, p. 1192, § 1, effective June 10. **L. 86:** Entire section amended, p. 1015, § 4, effective July 1.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, §§ 252, 260-262, 327, 331, 359.

C.J.S. See 6 C.J.S., Armed Services, § 298.

TITLE 28 MILITARY AND VETERANS : MILITARY :
ARTICLE 3.1 COLORADO CODE OF MILITARY JUSTICE :
PART 6 MISCELLANEOUS PROVISIONS

28-3.1-601. Courts of inquiry.

- (1) Courts of inquiry to investigate any matter may be convened by the governor.
- (2) A court of inquiry shall consist of three or more commissioned officers. For each court of inquiry, the convening authority shall also appoint counsel for the court.
- (3) Any person subject to this code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this code or employed in the department who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.
- (4) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.
- (5) The members, the counsel, the reporter, and the interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.
- (6) Witnesses may be summoned to appear and testify and may be examined before courts of inquiry in the same manner as provided for courts-martial.
- (7) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.
- (8) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member of the court in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member of the court in lieu of the counsel.

Source: **L. 83:** Entire article added, p. 1193, § 1, effective June 10. **L. 2002:** (3) amended, p. 362, § 24, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 121, Session Laws of Colorado 2002.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 254.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-602. Authority to administer oaths.

- (1) The following members of the military forces may administer oaths for the purposes of military justice, and affidavits may be taken for those purposes before such members or before persons having the general powers of a notary public:
- (a) The state judge advocate general and all assistant state judge advocates;
 - (b) All summary courts-martial members;
 - (c) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;

- (d) All commanding officers;
- (e) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial;
- (f) The president and counsel for the court of any court of inquiry;
- (g) All officers designated to take a deposition;
- (h) All persons detailed to conduct an investigation; and
- (i) All other persons designated by regulations of the governor.

(2) Officers of the state military forces may not be authorized to administer oaths as provided in this section unless they are on duty in or with those forces under orders of the governor as prescribed in this code.

(3) The signature without seal of any person designated in this section, together with the title of his or her office, is prima facie evidence of his or her authority.

Source: L. 83: Entire article added, p. 1193, § 1, effective June 10. L. 2002: (3) amended, p. 620, § 120, effective May 24.

28-3.1-603. Sections to be explained.

Sections of this code shall be carefully explained to every person at the time of his or her enlistment, appointment, transfer, or induction into or at the time of his or her order to duty in or with any of the state military forces or within ninety days thereafter. A complete text of this code and of the regulations prescribed by the governor thereunder shall be made available to any member of the state military forces, upon his or her request, for his or her personal examination. The requirements of this section are binding on all persons administering this code, but failure to follow them shall not divest a military court of jurisdiction.

Source: L. 83: Entire article added, p. 1194, § 1, effective June 10. L. 86: (1) amended, p. 1015, § 5, effective May 3. L. 2002: Entire section amended, p. 620, § 121, effective May 24.

28-3.1-604. Complaints of wrongs.

(1) Any member of the state military forces, who believes himself or herself wronged by any commanding officer in his or her chain of command and who is dissatisfied with the redress afforded by the grievance procedures set forth in the regulations prescribed by the adjutant general, may petition for redress by filing a complaint of wrongs. The complainant shall deliver the complaint to the military reporting official in the complainant's chain of command who last responded to the complainant's petition for redress before it was submitted to the inspector general pursuant to the regulations of the adjutant general. The complaint shall set forth facts in support of the petition and shall state that the facts are true to the best of the complainant's knowledge and belief. The person to whom the complaint is delivered shall respond to the complaint within forty-five days after receiving the complaint and shall address each allegation of the complaint.

(2) If the complainant is dissatisfied with the redress afforded by the response prepared pursuant to subsection (1) of this section and the complainant reasonably believes that he or she has evidence that rebuts the findings set forth in the response, the complainant may appeal to the military reporting official of the officer who responded to the complaint of wrongs. This appellate authority shall respond to the appeal within forty-five days of receiving the appeal, shall address each allegation of the appeal, and shall deliver a copy of the response to the adjutant general. The procedures set forth in this subsection (2) shall apply through each step of the complainant's chain of command until the complainant reaches the adjutant general.

(3) If the complainant is dissatisfied with the redress afforded by an appeal pursuant to subsection (2) of this section, the complainant may submit a complaint of wrongs directly to the governor. The governor shall respond to the complaint within forty-five days of receiving the complaint and shall address each allegation of the complaint.

(4) The governor may refer all complaints of wrongs to the national guard bureau inspector general for an independent investigation and report pursuant to federal law. Upon receipt of such report, the governor shall deliver to the complainant all portions of the report that may be released pursuant to federal law.

(5) Retaliation in any form against a complainant for pursuing the remedies described in this section is prohibited.

Source: **L. 83:** Entire article added, p. 1194, § 1, effective June 10. **L. 96:** Entire section amended, p. 86, § 1, effective August 7.

28-3.1-605. Redress of injuries to property.

(1) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his or her property has been wrongfully taken by members of the state military forces, said commanding officer may, subject to such regulations as the governor may prescribe, convene a board to investigate the complaint. The board shall consist of one to three commissioned officers and, for the purpose of that investigation, the board has power to summon witnesses and examine them under oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer and, in the amount approved by the commanding officer, shall be charged against the pay of the offenders. The order of the commanding officer directing such charges is conclusive on any disbursing officer for the payment by him or her to the injured parties of the damages so assessed and approved.

(2) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

(3) Any person subject to this code who is accused of causing willful damage to property has the right to be represented by counsel, to summon witnesses in his or her behalf, and to cross-examine those appearing against him or her.

Source: **L. 83:** Entire article added, p. 1194, § 1, effective June 10. **L. 2002:** (1) and (3) amended, p. 621, § 122, effective May 24.

ANNOTATION

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-606. Presumption of jurisdiction.

The jurisdiction of the military courts and boards established by this code shall be presumed, and the burden of proof rests on any person seeking to invalidate the jurisdiction of those courts or boards of jurisdiction in any action or proceeding.

Source: **L. 83:** Entire article added, p. 1195, § 1, effective June 10.

ANNOTATION

Am. Jur.2d. See 53A Am. Jur.2d, Military and Civil Defense, § 276.

C.J.S. See 6 C.J.S., Armed Services, § 298.

28-3.1-607. Delegation of authority by the governor.

The governor may delegate any authority vested in him or her under this code.

Source: **L. 83:** Entire article added, p. 1195, § 1, effective June 10. **L. 2002:** Entire section amended, p. 621, § 123, effective May 24.

ARTICLE 4
State Defense Force

28-4-101. Short title	28-4-107. Equipment - buildings.
28-4-102. Definitions.	28-4-108. Service outside state.
28-4-103. Supplemental military force.	28-4-109. Forces of other states - privilege.
28-4-103.5. Persons subject to military duty - state defense force.	28-4-110. Federal service.
28-4-104. State defense force - composition.	28-4-111. Civil groups not enlisted as units.
28-4-105. Organization - rules and regulations.	28-4-112. Citizenship a qualification.
28-4-106. Pay - members - employees of state.	28-4-113. Oath of officers.
	28-4-114. Enlistment period - oath.
	28-4-115. Articles of war.

28-4-101. Short title.

This article shall be known and may be cited as the "State Defense Force Act".

Source: **L. 43:** p. 444, § 19. **CSA:** C. 111, § 138. **CRS 53:** § 94-7-15. **C.R.S. 1963:** § 94-2-15. **L. 86:** Entire section amended, p. 1016, § 10, effective May 3.

28-4-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) and (2) (Deleted by amendment, L. 2002, p. 589, § 18, effective May 24, 2002.)

(3) "Saboteur" means a person who intentionally destroys, damages, moves, or interferes with any property with reasonable grounds to believe that the act will interfere with the preparation of the United States or any state for defense or for war or with the prosecution of war by the United States.

(4) "State defense force" means the organized military force of the state of Colorado other than the army national guard or air national guard and existing as a division of the department of military affairs pursuant to section 24-1-127 (3) (d), C.R.S.

(5) "State defense force active duty" means that duty performed by individuals pursuant to this article.

(6) "Terrorist" means a person who has engaged in, or is suspected of engaging in, acts of terrorism, as that term is defined in 18 U.S.C. sec. 3077 (1), as amended.

Source: **L. 43:** p. 439, § 1. **CSA:** C. 111, § 123. **CRS 53:** § 94-7-1. **C.R.S. 1963:** § 94-2-1. **L. 86:** (1) amended, p. 1016, § 11, effective May 3. **L. 2002:** (1) and (2) amended and (3) to (6) added, p. 589, § 18, effective May 24.

28-4-103. Supplemental military force.

The governor of the state of Colorado may establish, enlist, maintain, and train and regulate an organized military force within and for the state of Colorado constituting a part of the military establishment for the defense of the United States and the state of Colorado, in addition to and supplemental to the existing organizations of the

national guard, to the full extent authorized by the laws of the United States and the constitution of the state of Colorado.

Source: L. 43: p. 439, § 2. **CSA:** C. 111, § 124. **CRS 53:** § 94-7-2. **C.R.S. 1963:** § 94-2-2. **Cross references:** For the militia, see art. XVII, Colo. Const.

ANNOTATION

Am. Jur.2d. See 53 Am. Jur.2d, Military and Civil Defense, §§ 3, 29.

C.J.S. See 6 C.J.S., Armed Services, §§ 288, 289, 295.

28-4-103.5. Persons subject to military duty - state defense force.

(1) Every able-bodied male citizen of Colorado and those who have declared their intention to become citizens of the United States residing therein between the ages of eighteen and sixty-four years, except persons exempt by law, are subject to military duty in the state defense force. However, the following persons or classes of persons are exempted from military service:

- (a) Persons exempt by any statute of this state;
- (b) The members of any regularly organized fire or police department of any city, county, city and county, or town if such members are on full-time duty with the fire or police departments or if such members are found by the governor to be necessary for the health, welfare, or protection of the community;
- (c) Those permanently disqualified for military service because of physical disability and having in their possession a certificate of some licensed physician or surgeon which describes the nature thereof;
- (d) Justices, judges, and clerks of courts of record, clerks of municipal courts, county clerks and recorders, sheriffs, and ministers of the gospel;
- (e) Practicing physicians, officers and assistants of hospitals, prisons, and jails whose services are declared by the governor to be necessary for the general health, welfare, or protection of the community;
- (f) Persons determined to be mentally incompetent by a court of competent jurisdiction and persons convicted of a felony and not pardoned;
- (g) All persons who because of religious beliefs claim exemption from military service, if the conscientious holding of such belief by such persons is established under such regulations as the governor prescribes. Such persons shall be exempted from military service in a combat capacity, but no person so exempted shall be exempt from military service in any capacity which the governor declares to be noncombatant.

Source: L. 2002: Entire section added with relocations, p. 590, § 19, effective May 24.

Editor's note: This section was formerly numbered as 28-3-102.

ANNOTATION

Am. Jur.2d. See 53 Am. Jur.2d, Military and Civil Defense, §§ 35, 48.

C.J.S. See 57 C.J.S., Militia, §§ 4, 5, 8.

28-4-104. State defense force - composition.

The governor is authorized to organize and maintain within this state such military forces as the governor deems necessary to defend this state. Such forces shall be known as the state defense force and shall be composed of such citizens of the state as shall volunteer or be ordered by the governor and qualify for service therein. Such forces shall be additional to and distinct from the national guard. The Colorado state defense force shall be maintained in numbers to be determined by the governor. No officer or enlisted person of this force shall be a member of the

national guard or other armed force of the United States. Such part of this force as ordered by the governor shall be uniformed. Any part or all of this force may be called to state defense force active duty at the pleasure of the governor. All costs and expenses of the state defense force shall be paid from the general fund by separate appropriation to the department of military affairs.

Source: **L. 43:** p. 439, § 3. **CSA:** C. 111, § 125. **CRS 53:** § 94-7-3. **C.R.S. 1963:** § 94-2-3. **L. 82:** Entire section amended, p. 451, § 1, effective March 5. **L. 86:** Entire section amended, p. 1017, § 12, effective May 3. **L. 2002:** Entire section amended, p. 591, § 20, effective May 24.

ANNOTATION

Am. Jur.2d. See 53 Am. Jur.2d, Military and Civil Defense, § 3.

C.J.S. See 6 C.J.S., Armed Services, §§ 288, 289, 295.

28-4-105. Organization - rules and regulations.

The governor is authorized to prescribe the strength, branch of service, and rules and regulations not inconsistent with the provisions of this article governing the enlistment age of members of the force and governing the organization, physical requirements, administration, equipment, maintenance, training, and discipline of such force. Such rules and regulations, insofar as he or she deems practicable and desirable, shall conform to the existing law governing and pertaining to the national guard and the rules and regulations promulgated thereunder and shall prohibit the acceptance of gifts, donations, gratuities, or anything of value by any member of such force from any individual, firm, association, or corporation by reason of his or her membership; except that it is permissible for common carriers, such as airlines, railroads and bus lines, to carry members of such force without charge or at a reduced rate. The Colorado state defense force shall be commanded by the senior officer holding a state commission in the Colorado state defense force. He or she shall be designated by the adjutant general as the commanding officer of the Colorado state defense force. All the rights, powers, privileges, benefits, and emoluments created or existing by virtue of state laws, customs, or regulations heretofore had or enjoyed by the members of the Colorado national guard shall be conferred upon and vested in the members of the Colorado state defense force. All the duties and responsibilities imposed upon and demanded of the members of the Colorado national guard by the state laws, customs, or regulations are imposed upon and may be demanded of the members of the Colorado state defense force.

Source: **L. 43:** p. 440, § 4. **CSA:** C. 111, § 126. **CRS 53:** § 94-7-4. **C.R.S. 1963:** § 94-2-4. **L. 86:** Entire section amended, p. 1017, § 13, effective May 3. **L. 2002:** Entire section amended, p. 591, § 21, effective May 24.

ANNOTATION

Am. Jur.2d. See 53 Am. Jur.2d, Military and Civil Defense, § 3.

C.J.S. See 6 C.J.S., Armed Services, §§ 288, 289, 295.

28-4-106. Pay - members - employees of state.

All officers and enlisted persons of the Colorado state defense force when on state defense force active duty by order of the governor shall receive the same pay and allowances as are paid to officers and enlisted persons of like rank or grade in the army of the United States. Officers and enlisted persons may also voluntarily perform state defense force active duty in an unpaid volunteer status. Regardless of pay status, the officers and enlisted persons of the Colorado state defense force shall be construed to be employees of the state of Colorado, and, in the event that any such officer or enlisted person incurs injuries or becomes sick, diseased, or deceased while on active duty under orders of the governor of the state of Colorado, he or she shall be entitled to all of the benefits of the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., accruing to employees of the state of Colorado.

Source: **L. 43:** p. 441, § 5. **CSA:** C. 111, § 127. **CRS 53:** § 94-7-5. **C.R.S. 1963:** § 94-2-5. **L. 86:** Entire section amended, p. 1018, § 14, effective May 3. **L. 90:** Entire section amended, p. 571, § 60, effective July 1. **L. 2002:** Entire section amended, p. 592, § 22, effective May 24.

ANNOTATION

C.J.S. See 6 C.J.S., Armed Services, §§ 288, 289, 293.

28-4-107. Equipment - buildings.

For the use of such forces, the governor is authorized to requisition from the secretary of defense such arms and equipment as may be in possession of and can be spared by the defense department, to make available to such forces the facilities of state armories and their equipment and such other state premises and property as may be required, to lease office rooms and barracks and employ such clerical, medical, and other forces as necessary to carry out the provisions of this article, and to set the pay of such clerical, medical, and other forces.

Source: L. 43: p. 441, § 6. CSA: C. 111, § 128. CRS 53: § 94-7-6. C.R.S. 1963: § 94-2-6.

ANNOTATION

Am. Jur.2d. See 53 Am. Jur.2d, Military and Civil Defense, §§ 37, 38.

C.J.S. See 6 C.J.S., Armed Services, §§ 288, 289, 296.

28-4-108. Service outside state.

(1) Such forces shall not be required to serve outside the boundaries of the state except that:

(a) Upon the request of the governor of another state, the governor of this state, in his or her discretion, may order any portion or all of such forces to assist the military or police forces of such other state who are actually engaged in defending such other state. These forces may be recalled by the governor at his or her discretion.

(b) Any organization, unit, or detachment of such forces, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, terrorists, enemies, or enemy forces beyond the borders of this state into another state until such are apprehended or captured by such organization, unit, or detachment or until the military or police forces of the other state or forces of the United States have had an opportunity to take up the pursuit or to apprehend or capture such persons, if such other state has given authority by law for such pursuit by the forces of this state. Any such person who is apprehended or captured in such other state by an organization, unit, or detachment of the forces of this state, without unnecessary delay, shall be surrendered to the military or police forces of the state in which he or she is taken or to the United States, but such surrender shall not constitute a waiver by this state of its right to extradite or prosecute such person for any crime committed in this state.

Source: L. 43: p. 441, § 7. CSA: C. 111, § 129. CRS 53: § 94-7-7. C.R.S. 1963: § 94-2-7. L. 2002: Entire section amended, p. 592, § 23, effective May 24.

28-4-109. Forces of other states - privilege.

Any military forces or organizations, units, or detachments thereof of another state who are in fresh pursuit of insurrectionists, saboteurs, terrorists, enemies, or enemy forces may continue such pursuit into this state until the military or police forces of this state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons within this state while in fresh pursuit. Any such person who is captured or arrested by the military forces of such other state while in this state, without unnecessary delay, shall be surrendered to the military or police forces of this state to be dealt with according to law. This section shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful, and nothing contained in this section shall be deemed to repeal any of the provisions of sections 16-3-104 and 16-3-106, C.R.S.

Source: L. 43: p. 442, § 8. CSA: C. 111, § 130. CRS 53: § 94-7-8. C.R.S. 1963: § 94-2-8. L. 2002: Entire section amended, p. 592, § 24, effective May 24.

28-4-110. Federal service.

Nothing in this article shall be construed as authorizing such forces, or any part thereof, to be called, ordered, or in any manner drafted as such into the military service of the United States, but no person shall by reason of his or her enlistment or commission in any such forces be exempted from military service under any law of the United States.

Source: **L. 43:** p. 442, § 9. **CSA:** C. 111, § 131. **CRS 53:** § 94-7-9. **C.R.S. 1963:** § 94-2-9. **L. 2002:** Entire section amended, p. 621, § 124, effective May 24.

ANNOTATION

C.J.S. See 6 C.J.S., Armed Services, § 295.

28-4-111. Civil groups not enlisted as units.

No civil organization, society, club, post, order, fraternity, association, brotherhood, body, union, league, or other combination of persons or civil group shall be enlisted in such forces as an organization or unit.

Source: **L. 43:** p. 443, § 10. **CSA:** C. 111, § 132. **CRS 53:** § 94-7-10. **C.R.S. 1963:** § 94-2-10.

ANNOTATION

Am. Jur.2d. See 53 Am. Jur.2d, Military and Civil Defense, § 41.

C.J.S. See 6 C.J.S., Armed Services, § 288.

28-4-112. Citizenship a qualification.

No person shall be commissioned or enlisted in such forces who is not a citizen of the United States.

Source: **L. 43:** p. 443, § 11. **CSA:** C. 111, § 133. **CRS 53:** § 94-7-11. **C.R.S. 1963:** § 94-2-11.

ANNOTATION

Am. Jur.2d. See 53 Am. Jur.2d, Military and Civil Defense, § 70.

C.J.S. See 6 C.J.S., Armed Services, § 290.

28-4-113. Oath of officers.

The oath to be taken by officers commissioned in such force shall be substantially in the form prescribed for officers of the national guard, substituting the words "Colorado state defense force" where necessary.

Source: **L. 43:** p. 443, § 12. **CSA:** C. 111, § 134. **CRS 53:** § 94-7-12. **C.R.S. 1963:** § 94-2-12. **L. 86:** Entire section amended, p. 1018, § 15, effective May 3.

Cross references: For the oath required of officers of the Colorado national guard, see § 28-3-303.

ANNOTATION

C.J.S. See 6 C.J.S., Armed Services, § 291.

28-4-114. Enlistment period - oath.

The period of enlistment shall be as specified in department of military affairs policies and procedures. The oath to be taken upon enlistment in such forces shall be substantially in the form prescribed for enlisted men and women of the national guard, substituting the words "Colorado state defense force" where necessary.

Source: **L. 43:** p. 443, § 13. **CSA:** C. 111, § 135. **CRS 53:** § 94-7-13. **C.R.S. 1963:** § 94-2-13. **L. 86:** Entire section amended, p. 1018, § 16, effective May 3. **L. 2002:** Entire section amended, p. 593, § 25, effective May 24.

ANNOTATION

C.J.S. See 6 C.J.S., Armed Services, §§ 290, 291.

28-4-115. Articles of war.

(1) (Deleted by amendment, L. 2002, p. 593, § 26, effective May 24, 2002.)

(2) No officer or enlisted person of such force shall be arrested on any warrant while going to, remaining at, or returning from a place where he or she is ordered to attend military duty; except that nothing in this article shall be construed to prevent that person's arrest by order of a military officer or for a crime committed while not in actual performance of that person's state defense force active duty. Every officer and enlisted person of such force, during his or her service therein, shall be exempt from service upon any posse comitatus and from jury duty.

(3) When any member of the state defense force is on state defense force active duty, whether in paid or volunteer status, the individual is subject to the provisions of the "Colorado Code of Military Justice", as set forth in article 3.1 of this title.

Source: **L. 43:** p. 443, § 14. **CSA:** C. 111, § 136. **CRS 53:** § 94-7-14. **C.R.S. 1963:** § 94-2-14. **L. 86:** Entire section amended, p. 1018, § 17, effective May 3. **L. 2002:** Entire section amended, p. 593, § 26, effective May 24.

APPENDIX A

Sample Request for Military Support

Colorado National Guard
ATTN: POMSO
6848 S. Revere Parkway
Centennial, CO 80112

Dear Sir,

On behalf of the Pioneer Trails District, BSA, I am requesting your support for our spring jamboree coming up in March. This district jamboree will involve approximately 350 youth. We are in need of a GP medium tent and water trailer with drinking water. These items will be needed from Friday, March 24th through Sunday, March 26th 1997. If you can support us, please let me know at the following number

(xxx) xxx-xxxx.

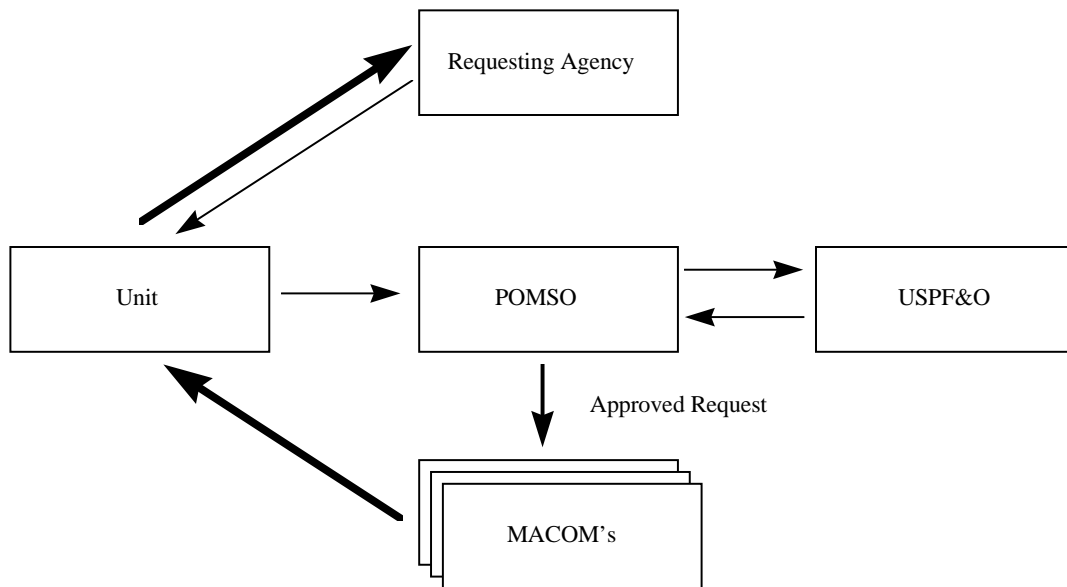
District Commissioner
Pioneer Trails District
Rocky Mountain Council

APPENDIX B

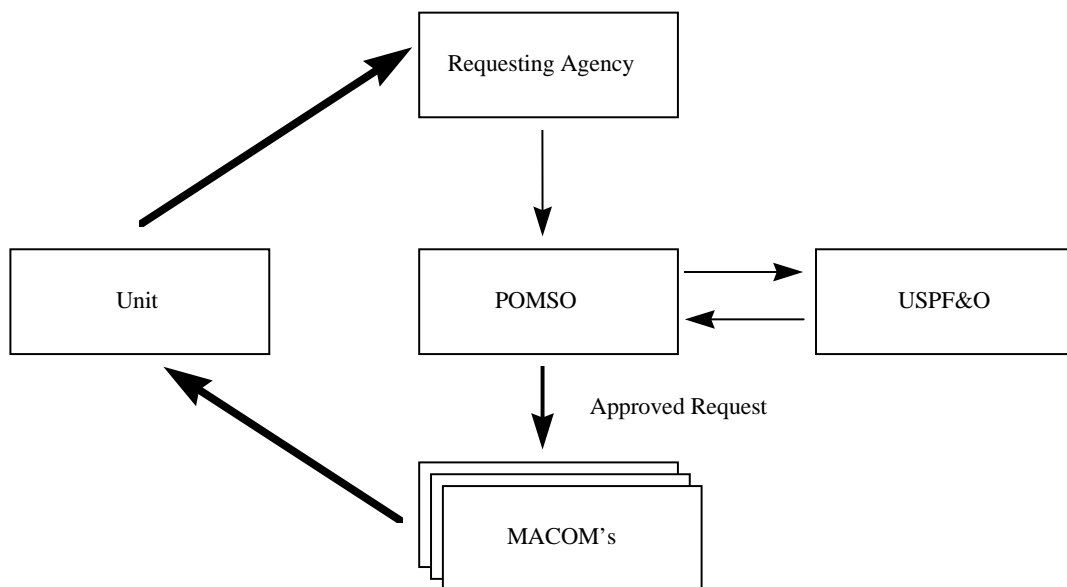
Sample mission Approval Request by POMSO

Flowchart for approval of Military Support Request

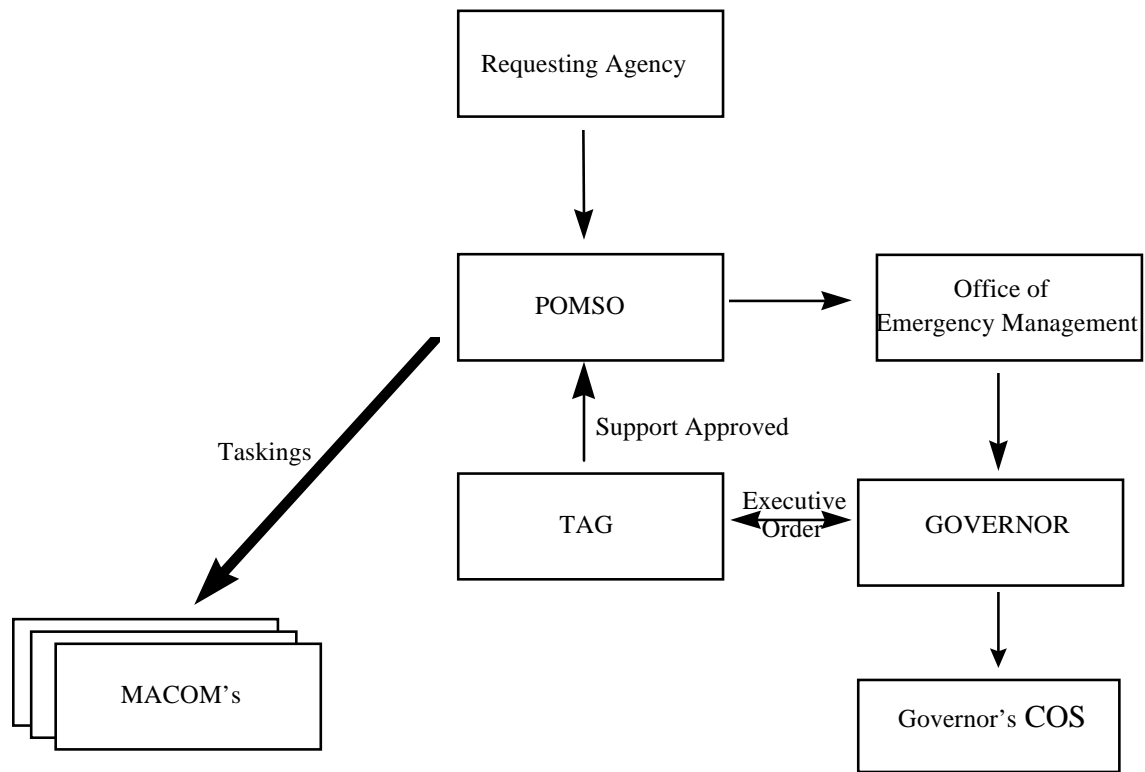
1. Request Submitted Directly to the Unit



2. Request Submitted Directly to the POMSO



Flowchart for Emergency/Disaster Response



APPENDIX E

Sample Executive Order

EXECUTIVE ORDER

DECLARING A DISASTER/EMERGENCY AND ORDERING TO STATE ACTIVE DUTY PART OF THE
COLORADO NATIONAL GUARD

WHEREAS, Wildfires broke out in several locations in the State of Colorado on 26 June 1997;

WHEREAS, The fires quickly increased from a few acres to over one hundred acres,

WHEREAS, Numerous fire fighters were involved in fighting the fires and more resources were needed to prevent the spread of fire; local government officials requested assistance from the Governor of the State of Colorado;

WHEREAS, This justification and the recitals made above were verified to me by the Adjutant General of Colorado;

NOW THEREFORE, I, Roy Romer, Governor of the State of Colorado, under the authority vested in me under Section 24-33.5-704, C.R.S., of the Colorado Disaster Emergency Act of 1973, DO HEREBY PROCLAIM, that a state of disaster emergency exists for the reasons set forth above, and confirm my verbal orders issued on 27 June 1997, that under the provisions of 28-3-104, C.R.S., the Adjutant General of Colorado order to State Active Duty, with pay, for a period not to exceed five (5) days to respond to the Buniger Fire. The Adjutant General shall determine the number of individuals assigned to this duty, and equipment deployed in this matter.

This executive order shall expire after five (5) days, unless otherwise extended.

Given under my hand and the Executive Seal of the State of Colorado,
this 27th day of June 2004.

Bill Owens
Governor

ABSTRACT OF REFERENCES

The following summaries is in no means intended for direct quotation of references but rather an indication of the subject matter contained in the references. Further research is required to understand the full intent of the references to be used in justifying National Guard support to Civil Authorities or Emergency Response Missions.

1. DOD Directive, dated 29 March 2004, Support and Services for Eligible Organizations and Activities Outside the Department of Defense.

- A directive-type memorandum from the Under Secretary of Defense authorizes the Military Departments to use the skills, capabilities, and resources of the Department of Defense to assist in addressing domestic needs of the United States. “The civil assistance provided will be accomplished through Innovative Readiness Training (IRT).”
- Services will be conducted primarily by Combat Service Support and Combat Support units.
- Must avoid competition with private sector.
- Support can be provided to any federal, regional, state or local government, youth groups and charitable organizations.
- The activity is limited to a total of 100 hours.
- Soldier should be conducting MOS related tasks.
- Use of ground vehicle support is authorized.
- Use of aircraft is prohibited.

2. DFAS-IN 37-1, dated 18 September 2004, Lease or Sale of Property

- Exempts certain activities from reimbursement if service does not interfere with mission of the furnishing agency and funds are available to cover costs. Activities exempted are as follows:
 - Services requested by a state, territory, county or municipal government.
 - Services requested by a non-profit organization in the interest of public health and welfare.
 - Any service of a humanitarian nature performed in emergency situations.

- (1) Life saving transportation
- (2) Search & Rescue operations
- (3) Airlift of personnel and supplies to s disaster site

3. NGR 500-1, Military Support to Civil Authorities

- Authorities military support operations in either a State Active Duty status or Federal status during emergency situations.
- Requires National Guard assets to be committed as a supplement to civil resources.
- Assistance is limited to tasks that because of experience and the availability of organic resources the National Guard can do more effectively or efficiently than another agency.
- Allows a National Guard commander to do what is required and justified to save human life, prevent human suffering or lessen major property damage.
- Support will not be denied or delayed solely for lack of a commitment for reimbursement or certification of liability from the requester.
- Requires reimbursement while on State Active Duty through the USPF&O. Restricts reimbursement to repair parts, POL and incremental costs or costs above the expenses which normally accrue during scheduled training.
- Includes reporting procedures to National Guard Bureau while conducting emergency/disaster response missions.

4. AR 700-131, Loan and Lease of Army Material

- Gives to State Adjutant General responsibility for approving loan & lease of federal equipment and property.
- Exempts reimbursement from state/local governments and non-profit activities designed for the public safety, health, or welfare.
- Requires reimbursement for use of aircraft.
- Exempts reimbursement for regular pay & allowances and administrative overhead costs.

NGB Pam 95-5, Use of Army National Guard Aircraft

- Authorizes use of aircraft in a medical emergency.
- Authorizes search and rescue missions in either state or federal status.
- Authorizes missions to be performed “incidental to training” where no reimbursement costs are involved.
- Specifies that State Active Duty missions will be reimbursed.
- Authorizes the use of aircraft to support civic-sponsored public events, local community relations activities and ARNG recruiting and retention efforts.

6. NGB Pam 360-5, National Guard Public Affairs Guidelines

- Provides guidance for support for public events, private organizations and community relations programs.

7. DOD Directive 4515.13R, Air Transportation Eligibility

- It implements DOD policies governing the use of DOD owned or controlled aircraft and establishes criteria for passenger and cargo movements.

APPENDIX G

STATE ACTIVE DUTY PAYROLL FORM

INSTRUCTIONS FOR STATE ACTIVE DUTY PAYROLL FORM:

1. PLEASE TYPE OR PRINT LEGIBLY - DMVA WILL BE UNABLE TO PROCESS PAYROLL IF THE NAME, ADDRESS OR SOCIAL SECURITY NUMBER IS ILLEGIBLE.
2. Describe Mission: Location and purpose. Attach a copy of the executive order (if available).
3. Full Legal Name: Do not include any nicknames or abbreviated names.
4. Social Security #: If taxes are to be withheld at a rate other than Single-0, please include a completed and signed W-4 form (a copy is included in this packet).
5. M/F and S/M: Indicate Male/Female and Single/Married. If person is single but has dependents, use Married indicator.
6. Address and Phone: Please include complete address and phone number (with area code).
7. Birth Date: This is for employee and tax identification purposes.
8. Start/End Date: Include the day, month and year. This is the period of time the guardsman was actually activated.
9. Total Days: Compute the total days the guardsman was activated. If there were breaks in the activation service, provide the information on two separate lines (one for each period of service).
10. Total Hours: DMVA will compute - this is for payroll input requirements.
11. Hourly Rate: DMVA will compute - this is for payroll input requirements.
12. Daily Base Pay: Complete per Military Pay information. Base pay **only**.
13. Total Base Pay: Total should equal the daily base pay times the total days.
14. Total Qtrs: Total quarters to be paid for activation period. (not daily rate).
15. Total Subst.: Total subsistence to be paid for activation period.

16. Total Additional: This is for any additional pay, such as hotel, per diem, etc. A receipt needs to be attached for any additional pay. If the pay is for per diem, a copy of the regulation allowing per diem should be attached.
17. Grand Total: Total of Base Pay, Qtrs, Subst and Additional. This is the total the guardsman will be paid (minus applicable withholding taxes).
18. Unit # and Name: In the case of multiple units, attach a list.
19. Activation POC: This is the central point of contact for this activation. This person should be able to provide or coordinate all information required by DMVA Personnel/Payroll. Include area code and phone number.
20. Certification: Required.

APPENDIX H

EMERGENCY RESPONSE CONTACT LIST

TAG	720 847-8801
DAG	720 847-8805 COARNG / 720 847-7700 COANG
POMSO	720 847-8860
DMVA CONTROLLER	720 847-8723
DEPUTY POMSO	720 847-8865
SECURITY MANAGER	720 847-8864
USPFO	720 847-8656
DEPUTY USPFO	720 847-8655
GOVERNOR's COS	303 866-6290

DATE

ANNEX A

REQUEST FOR SECTION 114

COLORADO AIR NATIONAL GUARD
Buckley ANG Base
Aurora, Colorado

10 July 1983

SUBJECT: Request for Action UP Section 114, CCMJ

Commander
Colorado Air National Guard
Buckley ANG Base
Aurora, Colorado

1. The enclosed file indicates that on or about 8 July 1983 at Buckley ANG Base, Colorado, Sergeant John Q. Public, 123-45-6789, a member of this unit, was drunk and disorderly at the CAMANA Club and was absent without leave from this unit at about 1600 hours the same date which constitutes conduct punishable under Articles _____ & _____, Colorado Code of Military Justice.

2. I recommend that you exercise your authority under the provisions of Section 114, CCMJ, in the disposition of this case.

JOHN DOE, CAPT, COANG
Commander

1 Encl: MP Report

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ANNEX B

REPLY TO

ATTN OF: 140TFW/CCQ Designator/Admin Office Designator/2 May 83

SUBJECT: Notice of Intent to Impose Section 114 CCMJ Nonjudicial Punishment

TO: Sgt John Q Public, 000-00-0000
140 Tactical Fighter Wing

1. You are directed to appear for nonjudicial punishment proceedings to be conducted _____ (location) _____, on _____ (date) _____, at _____ (time) _____.

2. You are accused of violating _____ (CCMJ Punitive Articles) _____ by:

{ Brief statement of }
{ facts }
{ supporting }
{ allegations }

3. The purpose of this proceeding is to determine your guilt or innocence and what, if any, nonjudicial punishment could be imposed pursuant to CCMJ Section 114.

4. You have the right to counsel through a military lawyer at no expense to you and if you intend to exercise that right, you should take this letter to your unit judge advocate at once. You also have the right to be represented by any commissioned non-lawyer spokesman.

5. Failure to appear at the appointed time and place could result in the imposition of nonjudicial punishment without your side of the story being considered or even in your being charged and tried by court-martial.

CHARLES C. COMMANDER, LtCol, USAF

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ANNEX C
Sample Worksheet

NONJUDICIAL PUNISHMENT WORKSHEET

PART I – NOTIFICATION

1. Name of Offender	Grade	Soc. Sec. #	Organization/Major Command
2. Offense(s), including Article of CCMJ and date:			
3. Date and name of JAG with whom I discussed this issue:			
4. Date this notification was given:			
5. On the date in Item 3, the Individual named in Item 1 appeared before me, and I advised him/her of the following, as checked under "YES":			YES NO
A. That preliminary investigation disclosed he/she had committed the offense(s) in Item 2 above.			
B. That I intend to punish him/her for the offense(s) unless he/she gave me satisfactory verbal or written evidence that he/she did not commit the offense(s), or gave me a satisfactory explanation which showed that punishment should not be imposed.			
C. Of the maximum punishment I could impose in these proceedings.			
D. That he/she did not have to give any information or say anything about the offense(s), and that anything he/she did say might be used for or against him/her in this action or in a trial by court-martial.			
E. That if he/she requested, military legal counsel would be made available, free of charge, to help him/her decide what to do about presenting matters in defense. That he/she also has the right to employ civilian counsel at his/her own expense.			
F. That assistance in obtaining counsel could be obtained by contacting:			
G. That he/she was entitled to an opportunity to make a full presentation in defense, mitigation, or extenuation, in writing or in person before me, or both.			
H. That if he/she desires to make an oral presentation, he/she might: (1) Call witnesses who were available locally and could be presented without legal process (that is, without subpoena or payment of witness fees); (2) Present evidence; and (3) Be accompanied by a person to speak on his/her behalf.			
I. That if he/she makes a presentation, written or oral, the final decision as to whether to impose punishment, and if so, the punishment to be imposed would be decided only after considering the matters presented.			
J. That he/she would be allowed 3 duty days (or longer if justified in writing) to respond to this notification. That his/her response must be received by me no later than the following time and date:			

PART II – IMPOSITION OF NONJUDICIAL PUNISHMENT

(To be completed after member has made elections on DMA Form SJAG 1a)

6. The individual's decision as to whether to submit matters in defense, extenuation, or mitigation is indicated by check mark.		
7. The check mark indicates whether the individual made an oral presentation in defense. Any written statements are attached.		
8. I imposed the following punishment:		
9. The individual () did () did not appear at this time. (The immediate commander will forward this form and other applicable attachments with the appeal).		
Typed name and grade of officer imposing punishment:		Signature:

DATE

INSTRUCTIONS FOR PREPARING DMVA FORM SJAG 1
“NONJUDICIAL PUNISHMENT WORKSHEET”

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ITEM

1. Self-explanatory.
2. Samples:

A. Failure to Go to Place of Duty

In that Airman John Doe, Colorado Air National Guard, 140th Tactical Fighter Wing at Buckley ANG Base, Aurora, CO, on or about 14 November 1981, without authority, failed to go at the time prescribed to his appointed place of duty, to-wit: Bldg. 901, Buckley ANG Base, Aurora, C

B. Leaving Place of Duty

In that Airman Joe Doe, Colorado Air National Guard, 140th Tactical Fighter Wing at Buckley ANG Base, Aurora, Co, on or about 14 November 1981, without authority, went from his appointed place of duty, to-wit, Bldg. 901, Buckley ANG, Aurora, CO.

C. Missing Movement

In that Airman Joe Doe, Colorado Air National Guard, 140th Tactical Fighter Wing at Buck ANG Base, Aurora, Co, on or about 14 November 1981, through design missed the movement of the 140th Tactical Fighter Wing with which he was required in the course of duty to move.

NOTE: If the investigation shows the movement was missed through neglect instead of by design, then the word “neglect” would be used instead of “design” in the above specification.

D. Assault on Superior

In that Airman Joe Doe, Colorado Air National Guard, 140th Tactical Fighter Wing at Buckley ANG Base, Aurora, CO, on or about 14 November 1981 assaulted Senior Master Sergeant Milton Herber, his superior noncommissioned officer, who was then in the execution of his office, by hitting him in the face with a wet mop.

E. Disrespect to Superior Noncommissioned Officer

In that Airman Joe Doe, Colorado Air National Guard, 140th Tactical Fighter Wing at Buckley ANG Base, Aurora, CO, on or about 7 June 1981, was disrespectful in language toward Senior Master Sergeant Hans Micklehelmer, his superior noncommissioned officer, who was then in the execution of his office, by saying to him “Stick it in your ear, you dumb square nerd” or words to that effect.

3. Self-explanatory.
4. Self-explanatory.
5. Check as each item is covered.

NOTE: Item 5-F coordinate with servicing Judge Advocate for information to enter here

NOTE: Items 6-8 are completed only after the member has made the proper elections on DMVA Form SJAG 1a.

6. Self-explanatory.
7. Self-explanatory.
8. Completed ONLY after the commander has fully considered any matters presented by the member and the commander has determined that punishment should be imposed.
9. Self-explanatory.

ANNEX D

**SUGGESTED GUIDE FOR CONDUCT OF NONJUDICIAL
PUNISHMENT PROCEEDINGS (Section 114)**

I. NOTIFICATION:

“CO” I am _____, Commander of (Name of Unit Organization). As a commander, I have disciplinary powers under 28-3.1-114 (Section 114) of the Colorado Code of Military Justice. I have received a report that you violated the Colorado Code of Military Justice and I am considering punishing you under Section 114. Punishment under Section 114 is called “Nonjudicial Punishment”. It is called “nonjudicial” because these proceedings are not a formal judicial trial like a court-martial. As a record of these proceedings, we use DMVA Form SJAG 1. I now hand you a copy of this form. Please read Items 1 through 5. You will see as you read the form, Item 2 states the offense(s) you are reported to have committed and Item 5 lists the rights you have in these proceedings. You are specifically advised that, under the provisions (the Colorado Code of Military Justice), you are not required to make any statement or provide any information concerning the alleged offense(s) but that, if you do, it can and will be used against you in these Section 114 proceedings or in a trial by court-martial. As the form which you have been given provides, you have the right to consult with a lawyer.

1. Note to CO:

Wait for the member to read Items 1 through 5. Allow him to retain the form you have given him until the proceedings are finished and you have either imposed punishment or decided not to impose it.

“CO” Do you understand Item 2? Do you understand the offense(s) you are reported to have committed?

“D” (YES) (NO)

2. Note to CO:

If the member does not understand the offense(s), explain the offense(s) to him. First, tell him what section(s) of the Code he is reported to have violated. Then, explain the elements of the offense(s) to him. Chapter V of the CCMJ lists the various offenses.

“CO” Do you understand Items 3 through 5? Do you have any questions about your rights in these proceedings?

“D” (YES) (NO)

3. Note to CO:

If the member does not understand his rights, explain them in greater detail. If the member asks a question you cannot answer, recess the proceedings. You probably can find the answer in one of the following sources:

- a. 28-31-114
- b. 28-31-501 ET SEG
- c. Chapter XXVIII of the US Manual for Courts-Martial
- d. Pertinent Regulations

If you cannot find the answer in one of these sources, you should contact your JAG office.

"CO" There are several decisions you have to make. You may not refuse the Section 114; however, you do have rights to appeal any decision of this proceeding. You must decide if you want to present witnesses or submit other evidence in defense, extenuation or mitigation. Evidence in extenuation would be circumstances surrounding the offense, showing the offense was not very serious. Evidence in mitigation would be facts about you, showing you are a good service member and you deserve favorable consideration. You can make a personal statement or I will interview any available witnesses you would like me to talk to. I will also consider any writings or physical objects you think I should examine. Furthermore, I will allow your personal representative to assist you in accomplishing what I have just mentioned. Do you understand the decisions you have to make?

"D" (YES) (NO)

"CO" I now had you a copy of the form we use to record your decisions in this proceeding, DMVA Form SJAG 1a. You will see that the form is addressed from you to me and bears today's date. We will return to this form in a moment.

I want to emphasize that if, after you have presented your evidence, I am convinced that you are guilty, I could then punish you. The maximum punishment I could impose you in these proceedings would be _____. (Here list the maximum penalties you could impose. **NOTE: You may not at a later date increase these in a nonjudicial punishment for these (offenses).**)

You have the right to talk to a lawyer before you make your decisions. You may be represented at no cost to you by military counsel, if available, or by any available commissioned officer of your choice. You also have the right to employ civilian counsel at your own expense. Would you like to talk to a lawyer before you make your decisions? (**NOTE: The accused may change his mind at a later date and be given the opportunity to talk to a lawyer prior to imposition of punishment.**)

"D" (YES) (NO)

4. Note to CO:

Have the member make the appropriate election and initial in Item 2 of the Election of Rights Form DMVA SJAG 1a. If the member wishes to employ civilian counsel in addition to consulting military counsel, he should check the last two (2) boxes on Item 2.

If the member desires to talk to an attorney, recess the proceedings and give the member a reasonable time to consult a lawyer, telling him when you will resume the proceedings. If he waives his right to consult with an attorney, you may proceed immediately.

"CO: You now have three (3) duty days to think about what you should do in this case. You may advise me of your decision at any time within the 3 duty day period. Report back to me at ____ (place) _____ not later than ____ (time) _____ hours on ____ (date) _____ unless you wish to proceed at an earlier time. Bring both forms I have given you with you when you return.

5. Note to CO:

The time and date you set for the member to report back to you must give the member this period to decide, unless he waives his right to the time. If he wants to proceed at any time before the end of the full period, have him waive the time and initial in Item 3 of the DMVA Form SJAG 1a when he reports back. If he waits the full time to decide, have him make that election and initial when he reports back. When you continue, proceed as follows:

"CO" I would like to know what your decisions are. Do you want to submit any evidence showing that you did not commit the offense(s) or concerning the circumstances surrounding your case to explain why you committed the

offense(s), or any other information concerning your background including information which can be provided by character witnesses, which you would like me to know?

“D” (YES) (NO)

“CO” You may elect to have a spokesman accompany you throughout these proceedings and speak in your behalf. This individual is not to function as an attorney and question witnesses. Rather, he is to assist you in pointing out to me those matters in your behalf which you think I should consider. Do you wish to be accompanied by a personal representative during the proceedings? (**NOTE: The commander questions the witness**).

“D” (YES) (NO)

6. Note to CO:

a. If the answers to the last two (2) questions are “NO”, you may proceed to impose punishment.

b. If the answer regarding the witnesses and evidence is “YES”, and the member is prepared to present this evidence immediately, proceed as follows: Consider the evidence presented. If the evidence persuades you that you should not punish the member, stop the proceedings. If you are still convinced that the member is guilty and deserves to be punished, you may proceed to impose punishment.

c. If the member needs additional time to gather his evidence or obtain a personal representative, proceed as follows: Give the member a reasonable period of time to gather his evidence or to obtain a representative. Tell the member when you will resume the proceedings, consider the member’s evidence. If the evidence persuades you that you should not punish the member, stop the proceedings and inform the member of your decision. If you are still convinced that the member is guilty and deserves to be punished, you may proceed to impose punishment.

II. IMPOSITION OF PUNISHMENT:

7. Note to CO:

If you decide not to punish the member, the proceedings are terminated. If, however, you do decide to impose punishment, complete Items 1, 4 and 5 of DMVA Form SJAG 1 and sign in the signature block. Then have the member report to you and proceed as follows.

“CO” I told you I was considering punishing you for the offense(s) shown on the form. If there anything else you would like to say before I tell you my decision?

“D” (YES) (NO)

“CO” (Even after considering your evidence) I am convinced that you committed the offense(s) stated on Item 2 of DMVA Form SJAG 1. For that reason, I hereby impose the following punishment(s) upon you:

III. APPELLATE ADVISE:

You have the right to appeal this action by notifying me in writing within 30 days of your desire to appeal through channels to _____. You can appeal because you think that, at these proceedings, I improperly denied you one of your rights or because you think the punishments I have imposed are too severe.

You will be provided with any assistance you need to prepare your appeal. If you appeal to _____, he/she can take several types of action on your appeal. He can simply deny your appeal and approve the punishments. He can suspend the punishments I have imposed. He can reduce the quantity or quality of the punishments. He can suspend the punishments I have imposed. Or he can completely appeal the punishments. Do you have any questions about your right to appeal?

“CO” Do you desire to appeal at this time?

“D” (YES) (NO)

8. Note to CO:

If the answer is “NO”, continue as follows.

“CO” Please check the proper box in Park II of the DMVA Form SJAG 1a and sign in the signature block at the bottom of the page. Also, be advised that you have ten (10) calendar days from today to change your mind after which time you may not appeal.

9. Note to CO:

Now give the member detailed orders (if necessary) as to how you want him to carry out his punishments.

“CO” You are free to go now.

10. Note to CO:

If the answer to the last questions are “YES”, continue as follows.

“CO” If you wish to submit any evidence for _____ to consider during the appeal, you must furnish it to me in writing not later than thirty (30) days from today, that is, not later than _____ 2004. If you need assistance in gathering this material, I will see that you receive assistance. When you furnish me with these materials, I will send the complete file to the proper authority. Do you wish to submit any evidence for _____ to consider during the appeal?

“D” (YES) (NO)

“CO” Please check the appropriate box in Park II of the DMVA Form SJAG 1a and sign in the signature block. I will notify you as soon as I learn what action has been taken on your appeal. You are free to go now.

DATE

ANNEX E

NON JUDICIAL PUNISHMENT – ELECTION OF RIGHTS		
FROM: (Individual concerned, name, grade, organization)	TO: (Title, organization of officer proposing punishment)	
PART I – TO BE ACCOMPLISHED PRIOR TO IMPOSITION OF PUNISHMENT		DATE
<p>1. You have advised me that you intend to impose punishment orally upon me under Section 28-3.1-114 of the Colorado Code of Military Justice. You have also advised me:</p> <ul style="list-style-type: none"> a. Of the offenses involved and the maximum punishments you could impose. b. That I need not make a statement or give information. c. That, if I make a written or oral statement or provide evidence, you will consider this in determining whether it provides a satisfactory explanation or establishes that I did not commit the offense(s), in which case you will not impose punishment. d. That, if I make an oral presentation, I may call witnesses who are available locally and can be presented without legal process. I may present evidence, and I may be accompanied by a person to speak in my behalf. e. That I have the right to counsel as indicated below. f. Of when my reply to your notification is due and that I may request additional time on written justification. 		
<p>2. I understand that, if I request, I am entitled to consult military counsel, free of charge, to advise me on what to do about presenting matters in defense. I understand that, if I want to consult counsel and have not already done so, you will allow me a reasonable period of time to consult counsel before continuing with this action and will assist me in contacting counsel if necessary. I also understand that I have the right to employ civilian counsel at my own expense.</p> <p> <input type="checkbox"/> I do not desire to consult counsel. <input type="checkbox"/> I have already consulted counsel. <input type="checkbox"/> I desire to consult military counsel and request that you allow me a reasonable amount of time to do so before continuing with this action. <input type="checkbox"/> I desire to employ civilian counsel and request that you allow me a reasonable amount of time to do so before continuing with this action. </p> <p style="text-align: right;">Initials _____</p>		
<p>3. I <input type="checkbox"/> waive <input type="checkbox"/> do not waive my right to 3 duty days to respond.</p> <p style="text-align: right;">Initials _____</p>		
<p>4. I understand that if I elect to make a presentation or consult ***** or both, you will not make a final decision as to whether to impose punishment. ***** If so, the punishment to be imposed until you have considered the results ***** matters.</p>		
Name and Grade of Individual	Signature	
PART II – TO BE ACCOMPLISHED AFTER THE OFFENDER HAS BEEN NOTIFIED OF HIS RIGHT TO APPEAL		Date
<p>I have also been advised of my right to appeal in accordance with the Colorado Code of Military Justice, Section 28-3.1-114.</p> <p style="text-align: right;">Initials _____</p>		
<p>I <input type="checkbox"/> do <input type="checkbox"/> do not appeal at this time.</p> <p style="text-align: right;">Initials _____</p>		
Name and grade of individual	Signature	

DATE

ANNEX F

TRANSMITTAL OF NONJUDICIAL PUNISHMENT RECORD AND FINE

Army Aviation Support Facility
COLORADO AIR NATIONAL GUARD
Buckley ANG Base
Aurora, Colorado

DATE

SUBJECT: Transmittal of Nonjudicial Punishment Record and Fine

TO: Commander, _____
UNIT

1. Attached is Nonjudicial Punishment Record in the case of _____, of your command. Request you enter proper remarks in the member's service record and file the nonjudicial punishment record of proceedings in his Field Personnel Record Group.

2. Attached is (check) (money order) in the amount of \$_____ in payment of the fine(s) assessed in this case. This money shall be forwarded immediately to the Department of Military and Veterans Affairs, for forwarding to the Colorado Department of Revenue, General Fund.

FOR THE COMMANDER:

JOHN A. DOE
CPT, COARNG
Adjutant

Encls: 2

I hereby acknowledge receipt of the record and money specified above, and certify that I have made the proper entries.

SIGNATURE: _____

TYPED NAME: _____

RANK & ORGN: _____

STATE OF COLORADO

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

6848 South Revere Parkway
Centennial, Colorado 80112
Phone (720) 847-8801
Fax (720) 847-8811



DATE:

REPLY TO 140TFW/CCQ (Unit Designator/Admin Office Designator)
ATTN OF:

SUBJECT: MITIGATION OF NONJUDICIAL PUNISHMENT

TO: SGT JOHN Q. PUBLIC, 000-22-1111
140 TACTICAL FIGHTER WING

1. On 1 May 1983, I imposed/nonjudicial punishment on you consisting of a reduction to the grade of sergeant. The punishment was not suspended. You have requested action be taken to mitigate the punishment.
2. I hereby mitigate the punishment of reduction to the grade of sergeant to forfeiture of \$75.00 per month for two months.
3. Your date of rank as staff sergeant is 1 July 1983.
4. You will acknowledge receipt of this communication by endorsement hereon.

LIONEL C. LINDSTROM, Major, COANG
Commander

SSgt JOHN Q. PUBLIC, 000-22-1111, 140TFW

2 July 2004

TO: 140TFW/CCQ

RECEIPT ACKNOWLEDGED ON 2 JULY 1983.

JOHN Q. PUBLIC, SSgt, COANG, 140TFW

Bill Owens
Governor
Major General
Mason C. Whitney
The Adjutant General

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STATE OF COLORADO

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

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Centennial, Colorado 80112
Phone (720) 847-8801
Fax (720) 847-8811



Governor

Major General
Maso. C. Whitney
The Adjutant General

DATE:

REPLY TO 140TFW/CCQ (Unit Designator/Admin Office Designator)
ATTN OF:

SUBJECT: SETTING ASIDE NONJUDICIAL PUNISHMENT

TO: SGT JOHN Q. PUBLIC, 111-11-1111
140 TACTICAL FIGHTER WING

5. On 1 April 1983, (I) (my predecessor in command) imposed nonjudicial punishment on you consisting of reduction to the grade of sergeant. No part of the punishment was suspended. (You have requested action be taken to set aside the punishment).
6. I hereby set aside the punishment. All rights, privileges and property of which you have been deprived by the sentence set aside will be restored.
7. Your date of rank as staff sergeant is 1 April 1981 (original date of rank).
8. You will acknowledge receipt of this communication by endorsement hereon.

JOHN DOE, MAJOR, COANG
Commander

1st IND

SSgt JOHN Q. PUBLIC, 111-11-1111, 140TFW

1 May 2004

TO: 140TFW/CCQ

RECEIPT ACKNOWLEDGED ON 5 May 1983.

JOHN Q. PUBLIC, SSgt, COANG, 140TFW

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STATE OF COLORADO

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

6848 South Revere Parkway
Centennial, Colorado 80112
Phone (720) 847-8801
Fax (720) 847-8811



Bill Owens
Governor

Major General
Mason C. Whitney
The Adjutant General

DATE:

REPLY TO 140TFW/CCQ (Unit Designator/Admin Office Designator)
ATTN OF:

SUBJECT: REMISSION OF NONJUDICIAL PUNISHMENT

TO: SGT JOHN Q. PUBLIC, 111-11-1111
140 TACTICAL FIGHTER WING

9. On 10 June 1983, (I) (my predecessor in command) imposed nonjudicial punishment on you consisting of reduction to the grade of sergeant and restriction to the limits of Plattsburgh Air Force Base, New York, for 60 days. No part of the punishment was suspended. You have requested action be taken to remit the punishment.
10. I hereby remit the unserved portion of the punishment relating to restriction to the limits of Plattsburgh Air Force Base, New York effective this date.
11. You will acknowledge receipt of this communication by endorsement hereon.

SUSAN R. SMITH, Lt Col, COANG
Commander

1st IND

Sgt JOHN Q. PUBLIC, 111-11-1111, 140TFW

12 July 2004

TO: 140TFW/CCQ

RECEIPT ACKNOWLEDGED ON 12 July 1983.

JOHN Q. PUBLIC, Sgt, COANG

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STATE OF COLORADO

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

6848 South Revere Parkway
Centennial, Colorado 80112
Phone (720) 847-8801
Fax (720) 847-8811



Bill Owens
Governor

Major General
Mason C. Whitney
The Adjutant General

DATE:

REPLY TO 140TFW/CCQ (Unit Designator/Admin Office Designator)
ATTN OF:

SUBJECT: SUSPENSION OF NONJUDICIAL PUNISHMENT

TO: SGT JOHN Q. PUBLIC, 111-11-1111
140 TACTICAL FIGHTER WING

12. On 7 April 1983, (I) (my predecessor in command) imposed nonjudicial punishment on you consisting of reduction to the grade of sergeant. No part of the punishment was suspended. (You have requested action be taken to suspend the punishment).
13. I hereby suspend the punishment until 1 June 1983, at which time, unless the suspension is sooner vacated, it will be remitted.
14. Your date of rank as staff sergeant is 1 October 1975 (original date of rank).
15. You will acknowledge receipt of this communication by endorsement hereon.

JOHN DOE, MAJOR, COANG
Commander

1st IND

SSgt JOHN Q. PUBLIC, 111-11-1111, 140TFW

3 May 2003

TO: 140TFW/CCQ

RECEIPT ACKNOWLEDGED ON 3 May 1983.

JOHN Q. PUBLIC, SSgt, USAF

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2005 CCMJ



Colorado Revised Statutes

2005

Volume 9

Colorado Code of Military Justice

Title 28

Military

- Art. 3. National Guard, 28-3-101 to 28-3-1304**
- Art. 3.1 Colorado Code of Military Justice, 28-3.1-101 to 28-3.1-607**
- Art. 4 State Defense Force, 28-4-101 to 28-4-115**